

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
  
RNC CONSOLIDATED CASES,

**DECLARATION OF  
RAJU SUNDARAN**

(RJS)(JCF)  
  
----- x

RAJU SUNDARAN, an attorney duly admitted to practice in the United States District Court for the Southern District of New York, declares under penalty of perjury and pursuant to 28 U.S.C. §1746 that the following is true and correct:

1. I am an Assistant Corporation Counsel in the office of MICHAEL A. CARDOZO, Corporation Counsel of the City of New York, attorney for defendants.
2. I am familiar with the facts and circumstances stated herein based upon personal knowledge, the books and records of the City of New York, and conversations with its agents and employees. I submit this declaration in support of defendants' reply memorandum of law in further support of their objections to the order of Magistrate Judge James C. Francis IV's, dated January 23, 2008, granting plaintiffs' motions to amend in part.
3. Annexed hereto as Exhibit G is the Order of Magistrate Judge James C. Francis IV, entered March 19, 2008, in all RNC actions concerning the RNC case management orders.
4. Annexed hereto as Exhibit H is the Order of Magistrate Judge James C. Francis IV, entered July 5, 2007, in all RNC actions concerning deposition scheduling.
5. Annexed hereto as Exhibit I is the Order of Magistrate Judge James C. Francis IV, entered October 26, 2007 in all RNC actions suspending deadlines for submission of dispositive motions in each case management order.

6. Annexed hereto as Exhibit J is Order of the Honorable Kenneth M. Karas, entered on July 21, 2005 in MacNamara, et al. v. City of New York, et al., 04 CV 9216 (RJS)(JCF).

7. Annexed hereto as Exhibit K is the Case Management Order, entered May 5, 2006, in Tikkun v. City of New York, et al., 05 CV 9901 (RJS)(JCF) specifically setting forth the deadline to amend the complaint.

8. Annexed hereto as Exhibit L is the Case Management Order, entered May 15, 2006, in Portera, et al. v. City of New York, et al., 05 CV 9985 (RJS)(JCF) specifically setting forth the deadline to amend the complaint.

9. Annexed hereto as Exhibit M is the Case Management Order, entered November 9, 2005, in Lee v. City of New York, et al., 05 CV 5528 (RJS)(JCF) and Cohen v. City of New York, et al., 05 CV 6780 (RJS)(JCF) specifically setting forth the deadline to amend the complaint.

10. Annexed hereto as Exhibit N is the Case Management Order, entered November 10, 2005, in Bell v. City of New York, et al., 05 CV 3705 (RJS)(JCF) and Starin v. City of New York, et al., 05 CV 5152 (RJS)(JCF) specifically setting forth the deadline to amend the complaint.

11. Annexed hereto as Exhibit O is the Order of Magistrate Judge James C. Francis IV, entered November 20, 2006, in Phillips, et al. v. City of New York, et al., 05 CV 7624 (RJS)(JCF); Coburn, et al. v. City of New York, et al., 05 CV 7623 (RJS)(JCF); Sloan, et al. v. City of New York, et al., 05 CV 7668 (RJS)(JCF); Galitzer v. City of New York, et al., 05 CV 7669 (RJS)(JCF); Bastidas, et al. v. City of New York, et al., 05 CV 7670 (RJS)(JCF); Carney, et al. v. City of New York, et al., 05 CV 7672 (RJS)(JCF); and Sikelianos v. City of New York, et al., 05 CV 7673 (RJS)(JCF) and the Order of Magistrate Judge James C. Francis IV, entered

March 2, 2007, in Drescher v. City of New York, et al., 05 CV 7541 (RJS)(JCF), concerning discovery deadlines in the case management orders.

12. Annexed hereto as Exhibit P are excerpts from the Deposition Testimony of Chief Terence Monahan in the RNC cases specifically identifying Commissioner David Cohen in connection with the RNC.


13. Annexed hereto as Exhibit Q are excerpts from the Deposition Testimony of Chief Joseph Esposito in the RNC cases specifically identifying Commissioner David Cohen in connection with the RNC.

14. Annexed hereto as Exhibit R is the Letter from James Mirro, Esq., dated February 1, 2008, to the Honorable Richard J. Sullivan, U.S.D.J., concerning the proposed briefing schedule for defendants' Rule 72 Appeal of Magistrate James C. Francis IV's January 23, 2008 Order granting plaintiffs' motion to amend in part.

15. Annexed hereto as Exhibit S is an Email from Clare Norins, Esq., dated February 3, 2008, to defendants' request for consent to the proposed Rule 72 briefing schedule.

16. I certify that the documents attached as Exhibits G through S to this declaration are true and correct copies of the original documents.

Dated: New York, New York  
April 7, 2008

  
\_\_\_\_\_  
RAJU SUNDARAN (RS 8011)  
Assistant Corporation Counsel

Appendix of Cases On Appeal Of January 23, 2008 Order

1. MacNamara, et al. v. City of New York, et al., 04 CV 9216 (RJS)(JCF).
2. Rechtschaffer v. City of New York, et al., 05 CV 9930 (RJS)(JCF).
3. Portera v. City of New York, et al., 05 CV 9985 (RJS)(JCF).
4. Bunim, et al. v. City of New York, et al., 05 CV 1562 (RJS)(JCF).
5. Kalra, et al. v. City of New York, et al., 05 CV 1563 (RJS)(JCF).
6. Ryan, et al. v. City of New York, et al., 05 CV 1564 (RJS)(JCF).
7. Garbini, et al. v. City of New York, et al., 05 CV 1565 (RJS)(JCF).
8. Greenwald, et al. v. City of New York, et al., 05 CV 1566 (RJS)(JCF).
9. Pickett, et al. v. City of New York, et al., 05 CV 1567 (RJS)(JCF).
10. Tremayne, et al. v. City of New York, et al., 05 CV 1568 (RJS)(JCF).
11. Biddle, et al. v. City of New York, et al., 05 CV 1570 (RJS)(JCF).
12. Moran, et al. v. City of New York, et al., 05 CV 1571 (RJS)(JCF).
13. Botbol, et al. v. City of New York, et al., 05 CV 1572 (RJS)(JCF).
14. Crotty, et al. v. City of New York, et al., 05 CV 7577 (RJS)(JCF).
15. Stark, et al. v. City of New York, et al., 05 CV 7579 (RJS)(JCF).
16. Lalier, et al. v. City of New York, et al., 05 CV 7580 (RJS)(JCF).
17. Grosso v. City of New York, et al., 05 CV 5080 (RJS)(JCF).
18. Dudek v. City of New York, et al., 04 CV 10178 (RJS)(JCF).
19. Bell v. City of New York, et al., 05 CV 3705 (RJS)(JCF).
20. Starin v. City of New York, et al., 05 CV 5152 (RJS)(JCF).
21. Lee v. City of New York, et al., 05 CV 5528 (RJS)(JCF).
22. Cohen v. City of New York, et al., 05 CV 6780 (RJS)(JCF).

23. Phillips, et al. v. City of New York, et al., 05 CV 7624 (RJS)(JCF).
24. Coburn, et al. v. City of New York, et al., 05 CV 7623 (RJS)(JCF).
25. Drescher v. City of New York, et al., 05 CV 7541 (RJS)(JCF).
26. Bastidas, et al. v. City of New York, et al., 05 CV 7670 (RJS)(JCF).
27. Xu, et al. v. City of New York, et al., 05 CV 7672 (RJS)(JCF).
28. Sloan, et al. v. City of New York, et al., 05 CV 7668 (RJS)(JCF).
29. Galitzer v. City of New York, et al., 05 CV 7669 (RJS)(JCF).
30. Sikelianos v. City of New York, et al., 05 CV 7673 (RJS)(JCF).
31. Abdell, et al. v. City of New York, et al., 05 CV 8453 (RJS)(JCF).
32. Adams, et al. v. City of New York, et al., 05 CV 9484 (RJS)(JCF).
33. Araneda, et al. v. City of New York, et al., 05 CV 9738 (RJS)(JCF).
34. Eastwood, et al. v. City of New York, et al., 05 CV 9483 (RJS)(JCF).
35. Tikkun v. City of New York, et al., 05 CV 9901 (RJS)(JCF).

# EXHIBIT G

(ECF)

**\*LEAD CASE\***

- against -

Defendants.

04 Civ. 7921 (RJS) (JCF)

O R D E R

Defendants.

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: 3/19/08

2. Absent exceptional circumstances, depositions of fact witnesses are concluded in all RNC cases, consistent with the case management orders. While some of the case management orders were extended de facto by the master deposition scheduling order, there was no basis for assuming that they had been abandoned altogether.

Sullivan's determination of issues now pending before him.

SO ORDERED.

  
JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York  
March 19, 2008

Copies mailed this date:

All Plaintiff's Counsel

Gerald S. Smith, Esq.  
Senior Corporation Counsel  
City of New York Law Department  
100 Church Street  
New York, NY 10007



# EXHIBIT H

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

(ECF)

MICHAEL SCHILLER, FRANCESCA  
FIORENTINI, ROBERT CURLEY, and  
NEAL CURLEY,

04 Civ. 7922 (KMK) (JCF)

LEAD CASE

Plaintiffs,

- against -

The CITY OF NEW YORK; RAYMOND  
KELLY, Commissioner of the New  
York City Police Department;  
TERENCE MONAHAN, Assistant Chief  
of the Bronx Bureau of the New  
York City Police Department,

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 7/5/07

Defendants.

DOCKET IN ALL  
RNC CASES

HACER DINLER, ANN MAURER, ASHLEY  
WATERS,

04 Civ. 7921 (KMK) (JCF)

Plaintiffs,

ORDER

- against -

CITY OF NEW YORK, COMMISSIONER  
RAYMOND KELLY,

Defendants.

JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

Counsel having submitted lists of agreed dates for depositions as well as lists of deponents for whom no date has been agreed upon, it is hereby ORDERED as follows:

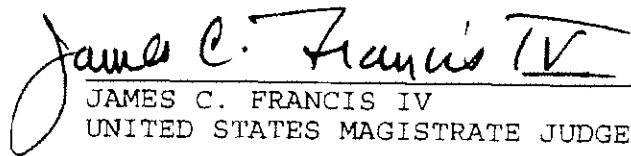
1. Depositions shall be conducted in accordance with the schedule set forth in the Appendix to this order. Counsel may deviate from that schedule only upon written stipulation or further order of the Court.

2. Where counsel appear to have agreed on more than one date for any witness, that witness has been listed for multiple dates.

3. Witnesses previously deposed have not been included in the schedule. If and when a dispute arises concerning either the propriety of recalling such a witness or the date of such a deposition, I will adjudicate those issues.

4. All counsel shall receive electronic notice of this order via ECF.

SO ORDERED.

  
JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York  
July 5, 2007

Copies mailed this date:

Christopher T. Dunn, Esq.  
New York Civil Liberties Union  
125 Broad Street, 17th Floor  
New York, New York 10004

Peter G. Farrell, Esq.  
Special Assistant Corporation Counsel  
City of New York Law Department  
100 Church Street  
New York, New York 10007

Joseph Carranza  
P.O. Box 575060  
Whitestone, New York 11357

APPENDIX

July 2-6, 2007

<u>Date</u>	<u>Plaintiffs Witnesses</u>	<u>Defendants Witnesses</u>
7/2	Crotty	
7/3	Geocos Hardesty	PO Denise Rose Hinksman Sgt. Sean O'Connor
7/5		DC Vincent Giordano
7/6	Flynn	

July 9-13, 2007

7/9	Ryan	Captain William Crossan PO Linder
7/10	Lucrezia Neary Roebeling Tepsic	PO Keri Mitchell Sgt. Evan Minoque Lt. David Sleva Insp. James McCarthy
7/11	Henriksan Heinegg Migliore Burns	
7/12	Rochfort Charity James	PO Donald Nelzi Sgt. Michael Sold PO Jeremiah Malone
7/13	Rosemoore Vaughan Poe Hannah Janeway	Captain Ronald Mercandetti

July 16-20, 2007

7/16	Ponce Lorusso Stone	Sgt. Allison Mullen Lt. Byrne PO Michael Eils PO Michael Caligere Lt. Brian Jackson Lt. Chris Delsante
7/17	Vaull Milne Marx	Sgt. Eddie Murphy Det. Michael Cummings PO Phillip Facenda PO Magdalen Kobiolka PO Yahaira LaChapell

7/18	Lalier Marty Rosenberg Paris	Lt. James O'Sullivan Sgt. Jorge Encarnacion PO Cuong Nguyen
7/19	Paine C. Lee Ortiz Palmer	UC 6216 PO Johanna Greenberg PO Timothy Cai PO Ed Harrigan
7/20	Parrot Melchor Church Howe	Lt. John Berquist PO Valerio Rodriguez PO Joseph Cappleman

July 23-27, 2007

7/23	Biddle Benjamin Goldenberg Jashnani	Cpt. Chico Cpt. Alexander Laera EMT Emery Taylor
7/24	Biddle Ingber Wipfli Henry	PO Vincent Fortunato PO Victor Perez Sgt. Allison Keating PO Tyree Fischer PO Sal Sedita
7/25	Wood Hasa Feinstein Miller	Chief William Morris Sgt. Donnelly Sgt. Darligan
7/26	Bekavac Hardesty Dickerson St. Laurent	Connie Fisher Lt. John Dolan Sgt. Evelyn Rivera Sgt. Conor McCourt PO Brett Bara PO Heriberto Mercado
7/27	Adams Stark Cheung Petrick	John Doe White Shirt Supervisor

July 30-Aug.3, 2007

7/30	Stipe Muellan Pogge Goldberg	Lt. Daniel Albano PO Courtney Hamlin Sergio Coppola
7/31	Zalk Crook Mukerjee Robinson	DI Michael Yanosik Sgt. William Murphy PO Remy Randall PO Daniel Ryan PO Christopher Chan PO Patrick Speechley

8/1	Giuliani Roberts Swink Howard	Steven Hammerman PO Jose Chaparro
8/2	Mitrano Albert Raymond	Insp. Thomas Pelligrino Captain Eugene Montchal PO Daniel Jasinski Lt. John Pribetich
8/3	Fowler Bornstein Nechay Shiller	PO Adam Piergostino PO Thomas Carney PO Patrice Barolette

Aug. 6-10, 2007

8/6	Sladek Averbakh Jones O'Reilly	PO Michael Balicki Sgt. Bolte PO Jagdeep Singh
8/7	Griffith Wood Hall Turse	PO John Cousins
8/8	Taft Alexander Tejada Ellisen	PO Melissa Roman Insp. Ward
8/9	Lewis Sidle Ogden-Nuss Remmes	PO Gregory Karnbach Ranking DCPI employees at 16th St. Ranking NYPD Legal Bureau at 16th St.
8/10	Bensen Sidle Lefemine	Sgt. Michael Ingram PO Javier Cordero Chief Michael Scagnelli Sgt. Arthur Smarsch PO Kathleen Curnyn

Aug. 13-17, 2007

8/13	Nelia Calabrese Cook Bhalla	PO Raymond Ng Ranking DCPI employee Fulton St. PO Matt Wohl PO Walter Padilla PO Martin Vasquez
8/14	Flaton Luci Bunn Rigby	Lt. James Griffin Lt. Joseph Sitro PO Michael Carrieri PO Joseph Andrade

8/15	Gingold Lang Richins	PO Kegham Jarjokian Cmmr. Garry McCarthy Cmmr. Robert Messner "Blue" PO Christopher Triquet
8/16	Chandra Rivera Spector Rettstadt	Capt. Robert Bonifati Sgt. Crichigno Sgt. Daniel Sarrubbo
8/17	Botbol Blackburn Kyne	Captain Dowling PO Steven Papola

Aug. 20-24, 2007

8/20	Roth Lassel Behling Duncan	Captain Dermot Shea PO Brian McSweeney PO James Wolff PO John Rooney
8/21	Rechtschaffer Bhagat Rubin Dietzen Cohen	PO Neil Rodriguez Sean Gumbs Patrick Quigley
8/22	Rorvig Langley Emmer Knapp	PO Victoria Schneider
8/23	O'Dierno Todd Glick Grisham	PO Noel Rodriguez Insp. John Hughes
8/24	Pielri Winkler T. Gaster	Sgt. Gregory Pekera PO Jason Wolf PO Tanisha Diaz Martin Paolino Sgt. Leslie Chan

Aug. 27-31, 2007

8/27	Aikman Davidson Trinkl Eastwood	PO Michael Filoseta Lt. Chris Pasquarelli
8/28	Pelcynski Muench Rosenthal Trudell C. Dwyer	Sgt. Jim Giambrone Sgt. Hugh Byrne

8/29	Fremont Borok Renwick Hunt Martin	Sgt. Anthony Rivers Sgt. Janus Fitzpatrick PO David Lawrence PO Gregory Markowski
8/30	Portera Buhle Walker Wu	Lt. Antonio Venice
8/31	Greenwald Vreeland Conley	PO Anthony Mason
Sept. 3-7, 2007		
9/4	Galitzer Brar DeBruhl Gaster	Sgt. Holmes
9/5	Viertel Janeway Tremayne Stephens Kalra	Lt. Christopher Czark Sgt. John White Sgt. Anthony Dellavalle
9/6	Katz Kappel Gamboa Sanchez Albertson	PO Francesco Belluscio PO Robert Hamer
9/7	Biddle Rubinfeld Ferrand-Sapsis Wilson Walden Carranza	Comm. Thomas Doepfner
Sept. 10-14, 2007		
9/10	Argyros Quick Reyna Janney Wright	Sgt. Geraldine Falcon Sgt. Frederick Grover PO John Martinez PO Jacqueline DeCarlo
9/11	Juarez Mathews Williamson Esquiviel	Ruby Marin-Jordan Det. Ahearn Sgt. DeConne



9/12	Kojis Holt Gross Ekberg Albertson	Lt. John Connolly
9/13	Freas Davies A. Sensiba G. Sensiba	Insp. Kerry Sweet
9/14	Bastidas Shekarchi Mulligan Segal Jordan	PO Kevin Scott Sgt. Anthony Kempinski Sgt. Marc Manara

Sept. 17-21, 2007

9/17	Soloff Becker Capps Lovecchio	Insp. John O'Connell PO Joseph Fong PO Brian Martin PO John Murtagh
9/18	Sakayama Edwards Epstein Drummond Walsh	SA Stephen Hughes
9/19	Reed Rahn Vik Hotchkiss O'Reilly-Rowe	Captain Thomas Arnet PO Bart Pipcinski Lt. Daniel Hayes Sgt. Steven Dean Mark Vazques
9/20	Majmudar Schulmeister Consigny Catchpole Drescher	PO Raul Santos PO Michael Christian
9/21	Weaver Belbin Parry Spritzer	Captain Andrew Savino PO Santo Ippolito PO William Haut

Sept. 24-28, 2007

9/24	Barron Cox Pardew D. Dwyer Petrello	Lt. Daniel MacFarland PO Neil Stumpf PO Christopher Krutys
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9/25	Laura K. Roberts Bunim Zambeck Arenda	PO Michael Safoshnick PO Josh Lewis PO Linda Araque PO Mark Steiner
9/26	Caspar Dyer Schoemann Wilson Miller	Crim. Justice Coordinator Reps. Sgt. O'Toole Sgt. Marerro
9/27	Adamson Haglund Podber Ditman Cohnen	Sgt. Gantt White shirted supervisor
9/28	Jabour Shaw Weikart Noonan Lang	Yahoshua Blisko
Oct. 1-5, 2007		
10/1	Xu Zariela Handleman Assam Kressly	PO Debra Mitchell PO James Grimes PO Alberto Angilletta PO Rene Sola
10/2	Kaplan Vendetti Pan Rueckner	Det. Joseph Sobolewski PO Jason Stewart PO Sontz PO Timothy Spies PO Ebony Huntley
10/3	Heinhold Kunz Ellmannn Martini Miller	PO Mona Phillips Capt. Kavanaugh Carmine Fiore
10/4	Flanigan Eifert Toerper James Cavanagh	Lt. Connolly Sgt. Chang Det. Nicholas Stanich PO Brendan Meehan
10/5	Miller Hurley Whitney Norwid Turner	PO Jason Martinoff Sgt. Thomas Durkin PO Gary Florencio

Oct. 8-12, 2007

10/8	Potok Gibbons	Sgt. Ronald Meyers Sgt. Gerald Fitzpatrick PO Poletto PO Glenn Hudecek
10/9	Lesser Dress Taylor Hottle Lahn	PO Elvis Shero Carlos Pucheco Isaura Peralta
10/10	Reilly Levin Lynn Hernandez Tikkun	Amir Rasheed PO Donna Farrell PO Shawn Allen
10/11	Porto Rosen Weltha Rose Kanouse	Commander Charles DiRienzo Lt. Charles Harnan PO Gregory Michels PO Louron Hall
10/12	Phillips Maddox Grimshaw M. Lee Ashbeck	Shakeel Ansari PO James Chung PO Michael Bonacci PO Pavel Gomez

Oct. 15-19, 2007

10/15	Harak Coburn Heifetz Bacon Davis	PO Shield 4483 Sgt. Young PO Steven Caraballo PO Hui Chi
10/16	Ross Cody Strasser Barber Larson	PO Manzi PO Adam Panasuk PO Michael Ali
10/17	Conklin Palmer McGee Gross Kantor	PO Matthew Sherman PO Maria Veliz PO Victor Lebron PO James Connolly
10/18	Goldstein Peterson Carney Kavanagh	Sgt. Gutierrez Sgt. Reynolds Sgt. Rivers Sgt. Rivera

10/19	Espisito Tuzzolo McEldowney Langergaard Koczek	PO Gabriel Healy Gregory Fontaine
Oct. 22-26, 2007		
10/22	Thomas-Melly Aronowsky Brezna Nawalkowsky Laken	PO Tyrone Riggan PO Franklin Diaz PO Colleen Killen
10/23	Wilcox Mahoney Murdock Crane Hill	Policy Witness (Tikkun)
10/24	Weiss Partnow Seshimo Lancot Hedemann	PO Felicia Alfred PO Sgt. Calderone
10/25	Swanson Sassone Pickett Duvall Lahond	PO Kimberly Daly PO Michael Gonzalez PO Terence McMenamy
10/26	Stefanelli Gindi Anastasio Barrows Boisvert	PO Giuseppe Ganci Sgt. Shield 2713 PO Lucille Fredericks
Oct. 29-Nov. 2, 2007		
10/29	Sikelianos Kaye Sperry Wetherby Siegel	PO John Woods PO Michael Deckert
10/30	Meyer Pelzek Gordon Barfield	PO Moises Martinez PO Thomas McDonnell
10/31	Sloan Fix Adams Logan Parrott	PO Joseph Bucchignano PO Virgilio Benscosme

11/1	Lovejoy Philips Lebet Nicinski McGee	Lt. James Johnson Captain McCormack
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11/2	Hobbs  Vilanova-Marques Duhaime San Marchi Dorals	Official re DOCS Planning & Arrest Processing David Szaboles Stephen Valentine
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Nov. 5-9, 2007

11/5	Flynn Martin White Shotwell Colville	PO Robert Martin PO Gerard Neumann
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11/6	Hankin	Sgt. Acosta Shield 14447 Lt. Thomas Lowe
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11/7	Schutzenhofer Moran Freitag Krassan Benn	Roland Betts PO Gregory Bell
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11/8	Adame Elfrank-Dana Reyes Scofield Kern	Insp. James Capaldo Lt. Raymond Spinella PO Michael Ho PO Drew Repetti
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11/9	Landwehr Jenkins Pincus D'Ornellas Murray	PO Khamwate Brijbukhan PO Dominick Bizarro
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Nov. 12-16, 2007

11/12	Walsh Perry Hardie Joseph	PO John Epstein N. Hoy
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11/13	Corley Ross Bernard Beeny	Scooter Supervisor
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11/14	Doxtader Kerns Burns DeMott	PO James Roscher Det. Christopher Ambrose PO Thomas Crean PO David Cicatiello
11/15	Hill Prokop Kinane	Kenneth Singleton PO Matthew Loftus
11/16	Chamey Agnase Gunn Ivors	Cpt. John Scolaro

# EXHIBIT I

Case 1:04-cv-07922-RJS-JCF Document 297 Filed 10/26/2007 Page 1 of 2  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
(ECF)

-----  
MICHAEL SCHILLER, et al.,

Plaintiffs,

- against -

THE CITY OF NEW YORK, et al.,

Defendants.  
-----

HACER DINLER, et al.,

Plaintiffs,

- against -

THE CITY OF NEW YORK, et al.,

Defendants.  
-----

JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

04 Civ. 7922 (RJS) (JCF)

**\*LEAD CASE\***

DOCKET IN ALL RELATED CASES


04 Civ. 7921 (RJS) (JCF)

O R D E R

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>10/26/07</u>
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In view of the outstanding discovery issues in many of the cases consolidated for discovery, the deadlines currently established by each case management order for submission of dispositive motions are suspended pending further order of the Court.

SO ORDERED.

  
JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York  
October 26, 2007



# **EXHIBIT J**

JUL 1 2005

MOORE & GOODMAN, LLP  
ATTORNEYS AT LAW  
740 BROADWAY AT ASTOR PLACE  
NEW YORK, N.Y. 10003-9518

TELEPHONE (212) 353-9587  
FACSIMILE (212) 674-4614

JONATHAN C. MOORE\*  
WILLIAM H. GOODMAN\*\*

DAVID MILTON

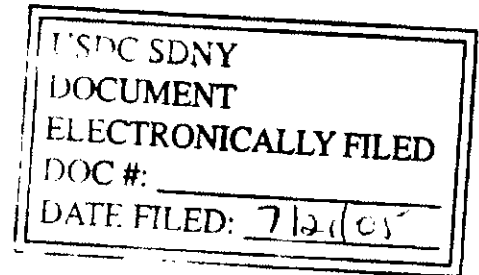
\*ALSO ADMITTED IN CALIFORNIA AND ILLINOIS  
\*\*ALSO ADMITTED IN MICHIGAN

**MEMO ENDORSED**

JANICE M. BADALUTZ  
PARALEGAL/INVESTIGATOR

OF COUNSEL  
MICHAEL HADDAD  
JULIA SHERWIN

July 5, 2005



VIA FAX: 212-805-7968  
The Honorable Kenneth M. Karas  
United States District Court  
500 Pearl Street  
New York, NY 10007

**Re: MacNamara et al. V. City of New York, et al., 04 CV 9216 (KMK)**

Your Honor,

Our law office has unexpectedly lost our lease and as a consequence, we are requesting a three-month delay in the previously negotiated and ordered Case Management Order (CMO) in the above-captioned case. I have contacted counsel for the defendants and we have agreed upon the following modifications in the CMO and are jointly requesting that the Court enter an Order, in accordance therewith.

We have agreed that, with the Court's permission, all dates set forth in the CMO (beginning with Paragraph 8) shall be postponed three months, with the following conditions and exceptions:

1. Plaintiffs' responses to the City's interrogatories and document requests, served on May 20, 2005, along with all executed releases, shall be served upon the City on a rolling basis, but no later than July 18, 2005;
2. The depositions of the named plaintiffs, noticed by the defendants on June 15, 2005 are adjourned until the pertinent records are produced and the parties set mutually convenient dates for the depositions, with the understanding that the last of these depositions shall be completed before plaintiffs serve their motion for class certification;
3. All of the provisions of the current CMO remain in place except those deadlines


MOORE & GOODMAN, LLP

## MEMO ENDORSED

- affected by this agreement and Order;
4. Plaintiffs shall file their Amended Complaint by July 15, 2005, and defendants' response shall be due by August 22, 2005;
  5. In the event that any witnesses whom the plaintiffs' seek to depose in this case, aside from arresting officers, are first noticed in another RNC case, plaintiffs will participate in that deposition rather than depose the witness separately.

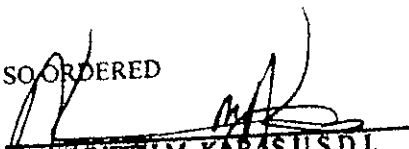
The parties have also agreed that two of the plaintiffs, Julia Cohen and Chris Kornicke, will be dismissed without prejudice, as they have obtained new counsel. We will prepare a stipulation and Order. We thank the Court for its patience and cooperation.

Sincerely,

  
William Goodman  
Moore & Goodman, LLP

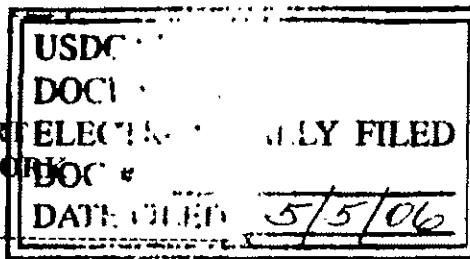
cc: James Mirro  
Fax: 212-788-9776

With the exceptions noted in this letter, and for the reasons stated therein, the dates set forth in the Case Management Order (Doc # 21) below paragraph 6 are postponed for two months.

SO ORDERED  
  
KENNETH M. KARAS U.S.D.J.  
7/19/05

# EXHIBIT K

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



KAITLYN TIKKUN, et al.,

Plaintiff,

-versus-

THE CITY OF NEW YORK, et al.

Defendants.

**CASE MANAGEMENT  
ORDER**

05 CV 9901 (KMK)(JCF)

----- X

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, the Court hereby enters its Case Management Order governing the foregoing case. This case arises from the arrest and detention of plaintiff by the New York City Police Department around the time of the Republican National Convention in New York City in late August and early September 2004 ("RNC Cases"). It involves numerous Defendants including the City of New York, its Mayor and Commissioner of Police.

In this case, the parties expect that issue will be joined shortly and that all of the material allegations of the complaint will be denied. Defendants have stipulated to the following terms at this time to permit Plaintiffs in these actions the opportunity to participate in the consolidated discovery currently underway in the related RNC Cases. In the interests of the convenience and economy of the parties, and the efficient management and oversight of the Court's docket, the Court hereby enters this order, the provisions of which are designed to be compatible with those in the RNC Case of *Macnamara, et al. v. The City of New York, et al.*, No. 04-CV-9216 (KMK) (JCF) and others.

In addition to this order, the parties are bound by (and the Court is entering in this case separately) Discovery Order #1 (which provides for the consolidated depositions of certain

defense witnesses) and Protective Order #1 (which provides for the confidential treatment of certain discovery materials).

The Court is advised that the parties do not consent to trial of this case by magistrate judge. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. All motions and applications shall be governed by the Court's Individual Practices, including pre-motion conference requirements. This order may be modified only by agreement of the parties, subject to the Court's approval, or upon a showing of good cause.

**DATE DUE**

**PLEADINGS & DISCOVERY**

The parties have agreed to dispense with initial disclosures and have commenced discovery.

5/1/06

Plaintiffs shall have served any amended complaint adding claims or joining parties. No further amendment to the complaint shall be permitted without leave of court.

5/31/06

The parties currently expect that the consolidated depositions of defense witnesses, as contemplated by Discovery Order #1, shall proceed at least through this date.

8/1/06 ~~11/1/06~~

All written discovery, including document requests and interrogatories, shall have been served, except as provided below.

11/1/06 ~~2/1/07~~

All depositions of fact witnesses shall have been noticed. With respect to both fact and expert witnesses, unless the noticing party assents, depositions of particular witnesses are not to be held until the party producing the witness has responded to any outstanding interrogatories and requests for documents pertaining to that witness. Once a party has completed the deposition of a witness, that party shall not later seek to re-depose that witness absent good cause.

2  
A/1/07

All fact discovery shall have been completed.

3  
A/1/07

Plaintiffs shall identify their expert witnesses for trial and provide the disclosures contemplated by the federal rules.

4  
~~7/1/07~~  
 5  
~~8/1/07~~  
 6  
~~9/1/07~~  
 7  
~~10/1/07~~  
 8  
~~11/1/07~~  
 8  
~~11/15/07~~

Depositions of plaintiffs' trial experts shall be completed.

Defendants shall identify their expert witnesses for trial and provide the disclosures contemplated by the federal rules.

Depositions of defendants' trial experts shall be completed.

All contention interrogatories and requests to admit shall be served.

All responses due to contention interrogatories and requests to admit.

All counsel must meet for at least one hour to discuss settlement no later than this date.

Counsel for the parties have discussed holding a settlement conference before a Magistrate Judge. The parties request a settlement conference before a Magistrate Judge.

Counsel for the parties have discussed the use of the Court's Mediation Program. The parties do not request that the case be referred to the Court's Mediation Program.

Counsel for the parties have discussed the use of a privately retained mediator. The parties do not intend to use a privately retained mediator.

#### **DISPOSITIVE MOTIONS**

9  
~~10/1/07~~

All dispositive motions shall have been served. Pursuant to the undersigned's Individual Practices, the parties shall request a pre-motion conference in writing at least four weeks prior to this deadline.

Oppositions due to all dispositive motions.

Replies, if any, due to all dispositive motions.

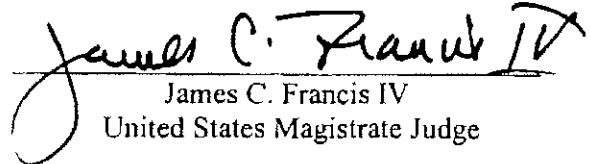
Within 30 days of the Court's ruling on dispositive motions

Should any part of the case remain after the Court's ruling on dispositive motions, a Pre-Trial Conference with the Court shall be held. Prior to that conference, the parties shall consult and submit to the Court a Joint Pretrial Order prepared in accordance with the Undersigned's Individual Practices and Rule 26(a)(3) of the Federal Rules of Civil Procedure. If this action is to be tried before a jury, proposed voir dire, jury instructions and a verdict form shall be filed with the Joint Pretrial Order. Counsel are required to meet and confer on the jury instructions and verdict form in an effort to make an agreed upon submission.

The parties have conferred and their present best estimate of the length of trial of an individual plaintiff's case is approximately 3 weeks.

**SO ORDERED**

DATED: New York, New York  
May 4, 2006

  
James C. Francis IV  
United States Magistrate Judge



# EXHIBIT L

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 5/15/06

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
BRIAN PORTERA, et al.,

Plaintiff,

-versus-

THE CITY OF NEW YORK, et al.

Defendants.  
----- X

MICHAEL REUBEN, et al.,

Plaintiff,

-versus-

THE CITY OF NEW YORK, et al.

Defendants.  
----- X

**CONSOLIDATED CASE  
MANAGEMENT ORDER**

05 CV 9985 (KMK)(JCF)

05 CV 9987 (KMK)(JCF)

DOCKET  
IN BOTH  
CASES

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, the Court hereby enters its Case Management Order governing the foregoing cases. These cases arise from arrests and detentions by the New York City Police Department around the time of the Republican National Convention in New York City in late August and early September 2004 ("RNC Cases"). They involve numerous Defendants including the City of New York, its Mayor and Commissioner of Police.

In these cases, issue has been joined and all of the material allegations of the complaints have been denied. Defendants have stipulated to the following terms at this time to permit Plaintiffs in these actions the opportunity to participate in the consolidated discovery currently underway in the related RNC Cases. In the interests of the convenience and economy of the parties, and the efficient management and oversight of the Court's docket, the Court hereby enters this order, the provisions of which are designed to be compatible with those in the

RNC Case captioned *Macnamara, et al. v. The City of New York, et al., No. 04-CV-9216 (KMK)* (JCF) and others. In addition to this order, the parties are bound by (and the Court is entering in these cases separately) Discovery Order #1 (which provides for the consolidated depositions of certain defense witnesses) and Protective Order #1 (which provides for the confidential treatment of certain discovery materials).

The Court is advised that the parties do not consent to trial by magistrate judge. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. All motions and applications shall be governed by the Court's Individual Practices, including pre-motion conference requirements. This order may be modified only by agreement of the parties, subject to the Court's approval, or upon a showing of good cause.

**DATE DUE**

**PLEADINGS & DISCOVERY**

The parties have agreed to dispense with initial disclosures and have commenced discovery.

5/31/06

The parties currently expect that the consolidated depositions of defense witnesses, as contemplated by Discovery Order #1, shall proceed at least through this date.

6/1/06

Plaintiffs shall have served any amended complaint adding claims or joining parties. No further amendment to the complaint shall be permitted without leave of court.

8/1/06

All written discovery, including document requests and interrogatories, shall have been served, except as provided below.

11/1/06

All depositions of fact witnesses shall have been noticed. With respect to both fact and expert witnesses, unless the noticing party assents, depositions of particular witnesses are not to be held until the party producing the witness has responded to any outstanding interrogatories and requests for documents pertaining to that witness. Once a party has completed the deposition of a witness, that party shall not later seek to re-depose that witness absent good cause.

- 2/1/07 All fact discovery shall have been completed.
- 3/1/07 Plaintiffs shall identify their expert witnesses for trial and provide the disclosures contemplated by the federal rules.
- 4/1/07 Depositions of plaintiffs' trial experts shall be completed.
- 5/1/07 Defendants shall identify their expert witnesses for trial and provide the disclosures contemplated by the federal rules.
- 6/1/07 Depositions of defendants' trial experts shall be completed.
- 7/1/07 All contention interrogatories and requests to admit shall be served.
- 8/1/07 All responses due to contention interrogatories and requests to admit.
- 8/15/07 All counsel must meet for at least one hour to discuss settlement no later than this date.

Counsel for the parties have discussed holding a settlement conference before a Magistrate Judge. The parties request a settlement conference before a Magistrate Judge.

Counsel for the parties have discussed the use of the Court's Mediation Program. The parties do not request that the case be referred to the Court's Mediation Program.

Counsel for the parties have discussed the use of a privately retained mediator. The parties do not intend to use a privately retained mediator.

#### **DISPOSITIVE MOTIONS**

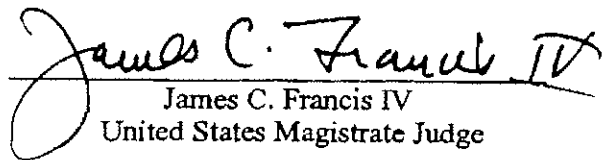
- 9/1/07 All dispositive motions shall have been served. Pursuant to the undersigned's Individual Practices, the parties shall request a pre-motion conference in writing at least four weeks prior to this deadline.
- 10/1/07 Oppositions due to all dispositive motions.
- 11/1/07 Replies, if any, due to all dispositive motions.
- Within 30 days of the Court's ruling on dispositive motions Should any part of the case remain after the Court's ruling on dispositive motions, a Pre-Trial Conference with the Court shall be held. Prior to that conference, the parties shall consult and submit to the Court a Joint Pretrial Order prepared in accordance with the Undersigned's Individual Practices and Rule 26(a)(3) of the Federal Rules of Civil Procedure. If

this action is to be tried before a jury, proposed voir dire, jury instructions and a verdict form shall be filed with the Joint Pretrial Order. Counsel are required to meet and confer on the jury instructions and verdict form in an effort to make an agreed upon submission.

The parties have conferred and their present best estimate of the length of trial of an individual plaintiff's case is approximately 2 weeks.

**SO ORDERED**

DATED: New York, New York  
May 15, 2006

  
James C. Francis IV  
United States Magistrate Judge

# EXHIBIT M

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 11/9/05

----- X	
ADAM WROBLEWSKI,	
	Plaintiff,
-versus-	
THE CITY OF NEW YORK, et al.	
	Defendants.
----- X	
JEANETTE LAHN-SHEEN LEE, et al.	
	Plaintiffs,
-versus-	
THE CITY OF NEW YORK, et al.	
	Defendants.
----- X	
JULIA R. COHEN,	
	Plaintiff,
-versus-	
THE CITY OF NEW YORK, et al.	
	Defendants.
----- X	
CHRIS J. KORNICKE,	
	Plaintiff,
-versus-	
THE CITY OF NEW YORK, et al.	
	Defendants.
----- X	

**CONSOLIDATED CASE  
MANAGEMENT ORDER**

05 CV 5150 (KMK)

05 CV 5528 (KMK)

05 CV 6780 (KMK)

05 CV 7025 (KMK)

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, the Court hereby enters its Case Management Order governing the foregoing cases. These cases arise from arrests and detentions by the New York City Police Department around the time of the Republican National Convention in New York City in late August and early September 2004 ("RNC Cases"). They involve numerous named Plaintiffs and numerous Defendants including the City of New York, its Mayor and Commissioner of Police.

In these cases, issue has been joined (or will be joined shortly) and all of the material allegations of the complaints have been denied. The following schedule permits Plaintiffs in these actions the opportunity to participate in the consolidated discovery of Defendants scheduled to commence this fall in the related RNC Cases, as contemplated by the Court's Discovery Order #1 (entered on October 3, 2005), followed by a period of discovery of plaintiffs, non-consolidated defense witnesses and any other discovery in these actions.

The Court is advised that the parties do not consent to trial of this case by magistrate judge. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. All motions and applications shall be governed by the Court's Individual Practices, including pre-motion conference requirements. This order may be modified only by agreement of the parties, subject to the Court's approval, or upon a showing of good cause.

**DATE DUE**

**PLEADINGS & DISCOVERY**

The parties have agreed to dispense with initial disclosures and have commenced discovery.

- |         |   |
|---------|---|
| 12/1/05 | Plaintiffs shall have served any amended complaint adding claims or joining parties. No further amendment to the complaint shall be permitted without leave of court.   |
| 2/1/06  | Depositions of Defendants' "Consolidated Witnesses," as set forth in the Court's Discovery Order #1, shall be completed.  |
| 3/1/06  | All written discovery, including document requests and interrogatories, shall have been served, except as provided below.   |
| 5/1/06  | All depositions of fact witnesses shall have been noticed. With respect to both fact and expert witnesses, unless the noticing party assents, depositions of particular witnesses are not to be held until the party producing the witness has responded to any outstanding interrogatories and requests for documents pertaining to that witness. Once a party has completed the deposition of a witness, that party shall not later seek to |



re-depose that witness absent good cause.

6/1/06

All fact discovery shall have been completed.

7/1/06

Plaintiffs shall identify their expert witnesses for trial and provide the disclosures contemplated by the federal rules.

8/1/06

Depositions of plaintiffs' trial experts shall be completed.

9/1/06

Defendants shall identify their expert witnesses for trial and provide the disclosures contemplated by the federal rules.

10/1/06

Depositions of defendants' trial experts shall be completed.

11/1/06

All contention interrogatories and requests to admit shall be served.

12/1/06

All responses due to contention interrogatories and requests to admit.

12/15/06

All counsel must meet for at least one hour to discuss settlement no later than this date.

Counsel for the parties have discussed holding a settlement conference before a Magistrate Judge. The parties request a settlement conference before a Magistrate Judge.

Counsel for the parties have discussed the use of the Court's Mediation Program. The parties do not request that the case be referred to the Court's Mediation Program.

Counsel for the parties have discussed the use of a privately retained mediator. The parties do not intend to use a privately retained mediator.

### **DISPOSITIVE MOTIONS**

1/1/07

All dispositive motions shall be served. Pursuant to the undersigned's Individual Practices, the parties shall request a pre-motion conference in writing at least four weeks prior to this deadline.

2/1/07

Oppositions due to all dispositive motions.

3/1/07

Replies, if any, due to all dispositive motions.

Within 30 days of the Court's ruling on dispositive motions

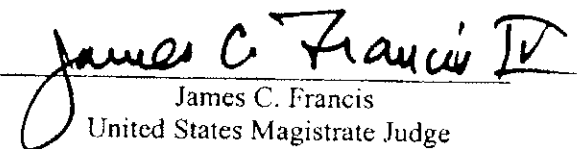
Should any part of the case remain after the Court's ruling on dispositive motions, a Pre-Trial Conference with the Court shall be held. Prior to that conference, the parties shall consult and submit to the Court a Joint Pretrial Order prepared in accordance with the Undersigned's Individual

Practices and Rule 26(a)(3) of the Federal Rules of Civil Procedure. If this action is to be tried before a jury, proposed voir dire, jury instructions and a verdict form shall be filed with the Joint Pretrial Order. Counsel are required to meet and confer on the jury instructions and verdict form in an effort to make an agreed upon submission.

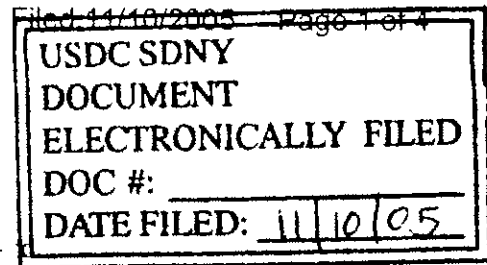
The parties have conferred and their present best estimate of the length of trial of an individual plaintiff's case is approximately 2 weeks.

**SO ORDERED**

DATED: New York, New York  
October 9, 2005  
*Nov.*

  
James C. Francis  
United States Magistrate Judge

# EXHIBIT N



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JEFFREY BLACK,

Plaintiff,

-versus-

THE CITY OF NEW YORK, et al.,

Defendants.

----- x  
CATHIE L. BELL,

Plaintiff,

-versus-

THE CITY OF NEW YORK, et al.,

Defendants.

----- x  
ELIZABETH STARIN,

Plaintiff,

-versus-

THE CITY OF NEW YORK, et al.,

Defendants.

----- x  
STUART HABER,

Plaintiff,

-versus-

THE CITY OF NEW YORK, et al.,

Defendants.

----- x

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, the Court hereby enters its Case Management Order governing the foregoing cases. These cases arise from arrests and detentions by the New York City Police Department around the time of the Republican National Convention in New York City in late August and early September 2004 ("RNC

CONSOLIDATED CASE  
MANAGEMENT ORDER

05 CV 3616 (KMK)

05 CV 3705 (KMK)

05 CV 5152 (KMK)

05 CV 6193 (KMK)

Cases"). They involve numerous named Plaintiffs and numerous Defendants including the City of New York, its Mayor and Commissioner of Police.

In these cases, issue has been joined (or will be joined shortly) and all of the material allegations of the complaints have been denied. The following schedule permits Plaintiffs in these actions the opportunity to participate in the consolidated discovery of Defendants scheduled to commence this fall in the related RNC Cases, as contemplated by the Court's Discovery Order #1 (entered on October 3, 2005), followed by a period of discovery of plaintiffs in these actions.

The Court is advised that the parties do not consent to trial of this case by magistrate judge. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. All motions and applications shall be governed by the Court's Individual Practices, including pre-motion conference requirements. This order may be modified only by agreement of the parties, subject to the Court's approval, or upon a showing of good cause.

**DATE DUE**

**PLEADINGS & DISCOVERY**

- |          |   |
|----------|---|
| 12/30/05 | Plaintiffs shall have served any amended complaint adding claims or joining parties. No further amendment to the complaint shall be permitted without leave of court.   |
| 2/1/06   | Depositions of Defendants' "Consolidated Witnesses," as set forth in the Court's Discovery Order #1, shall be completed.  |
| 3/1/06   | All written discovery, including document requests and interrogatories, shall have been served, except as provided below.   |
| 5/1/06   | All depositions of fact witnesses shall have been noticed. With respect to both fact and expert witnesses, unless the noticing party assents, depositions of particular witnesses are not to be held until the party producing the witness has responded to any outstanding interrogatories and requests for documents pertaining to that witness. Once a party has |

completed the deposition of a witness, that party shall not later seek to re-depose that witness absent good cause.

6/1/06

All fact discovery shall have been completed.

7/1/06

Plaintiffs shall identify their expert witnesses for trial and provide the disclosures contemplated by the federal rules.

8/1/06

Depositions of plaintiffs' trial experts shall be completed.

9/1/06

Defendants shall identify their expert witnesses for trial and provide the disclosures contemplated by the federal rules.

10/1/06

Depositions of defendants' trial experts shall be completed.

11/1/06

All contention interrogatories and requests to admit shall be served.

12/1/06

All responses due to contention interrogatories and requests to admit.

12/15/06

All counsel must meet for at least one hour to discuss settlement no later than this date.

Counsel for the parties have discussed holding a settlement conference before a Magistrate Judge. The parties request a settlement conference before a Magistrate Judge.

Counsel for the parties have discussed the use of the Court's Mediation Program. The parties do not request that the case be referred to the Court's Mediation Program.

Counsel for the parties have discussed the use of a privately retained mediator. The parties do not intend to use a privately retained mediator.

### **DISPOSITIVE MOTIONS**

1/1/07

All dispositive motions shall be served. Pursuant to the undersigned's Individual Practices, the parties shall request a pre-motion conference in writing at least four weeks prior to this deadline.

2/1/07

Oppositions due to all dispositive motions.

3/1/07

Replies, if any, due to all dispositive motions.

Within 30 days of the Court's ruling on dispositive motions

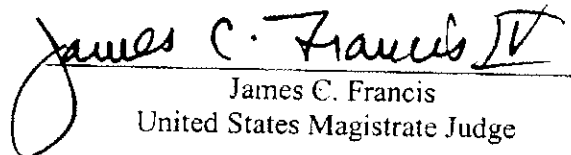
Should any part of the case remain after the Court's ruling on dispositive motions, a Pre-Trial Conference with the Court shall be held. Prior to that conference, the parties shall consult and submit to the Court a Joint

Pretrial Order prepared in accordance with the Undersigned's Individual Practices and Rule 26(a)(3) of the Federal Rules of Civil Procedure. If this action is to be tried before a jury, proposed voir dire, jury instructions and a verdict form shall be filed with the Joint Pretrial Order. Counsel are required to meet and confer on the jury instructions and verdict form in an effort to make an agreed upon submission.

The parties have conferred and their present best estimate of the length of trial of an individual plaintiff's case is approximately 2 weeks.

**SO ORDERED**

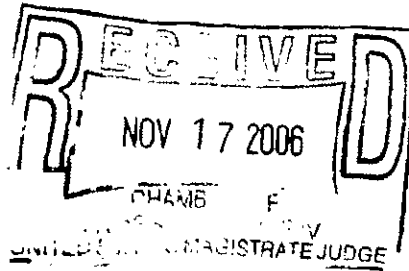
DATED: New York, New York  
November 9, 2005

  
James C. Francis  
United States Magistrate Judge

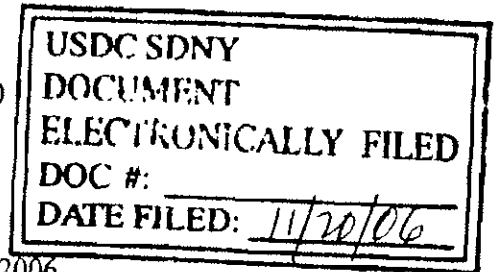
# EXHIBIT O



**MEMO ENDORSED**



Jeffrey A. Rothman  
Attorney at Law  
575 Madison Avenue, Suite 1006  
New York, NY 10022  
Tel.: (212) 348-9833; (212) 937-8450  
Cell: (516) 455-6873  
Fax: (212) 591-6343  
jrothman@alumni.law.upenn.edu



November 17, 2006

By Hand

The Honorable James C. Francis IV  
United States Magistrate Judge  
United States District Court for the Southern District of New York  
500 Pearl Street – Room 1960  
New York, NY 10007

Re: Phillips, et al. v. City of New York, et al., 05 Civ. 7624 (KMK) (JCF);  
Coburn, et al. v. City of New York, et al., 05 Civ. 7623 (KMK) (JCF);  
Sloan, et al. v. City of New York, et al., 05 Civ. 7668 (KMK) (JCF);  
Galitzer v. City of New York, et al., 05 Civ. 7669 (KMK) (JCF);  
Bastidas, et al. v. City of New York, et al., 05 Civ. 7670 (KMK) (JCF);  
Carney, et al. v. City of New York, et al., 05 Civ. 7672 (KMK) (JCF);  
Sikelianos v. City of New York, et al., 05 Civ. 7673 (KMK) (JCF);  
Jarick v. City of New York, et al., 05 Civ. 7626 (KMK) (JCF);

Please  
Docket  
in all  
cases

Dear Judge Francis:

just 3/ I write to respectfully request, jointly with counsel for defendants, an additional extension of 3 months on all remaining deadlines pursuant to the Case Management Orders in the above-captioned RNC cases. Pursuant to Your Honor's Discovery Order #2 of November 13, 2006, the parties are in the process of setting up dates for the depositions of twenty-seven "Arresting Officers" over the course of the next several months in the above-captioned cases. In addition to these, a significant number of Commanding Officer depositions, and depositions of officials of the Hudson River Park Trust, will need to be scheduled in the above-captioned cases, in conjunction with the resolution of other discovery issues associated therewith.

This is the parties' third joint request for an extension of the Case Management Orders in the above-captioned cases.

Respectfully submitted,

Jeffrey Rothman

cc: James Mirro, Esq. (by email)  
Fred Weiler, Esq. (by email)  
Jeffrey Dougherty, Esq. (by email)  
Curt Beck, Esq. (by email)

11/17/06  
Application granted as modified.  
No further extensions.  
SO ORDERED.  
James C. Francis IV  
USMJ



MEMO ENDORSED

MICHAEL A. CARDOZO  
Corporation Counsel

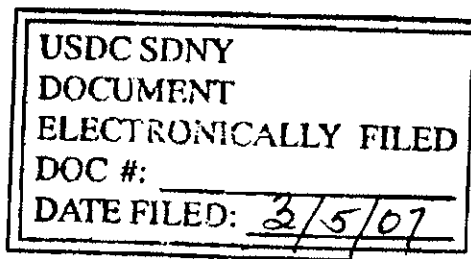
THE CITY OF NEW YORK  
LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, NY 10007

FRED M. WEILER  
Special Federal Litigation Division  
TEL 212-788-1817  
FAX: 212-788-9776

March 2, 2007

VIA FAX 212-805-7930

Honorable James C. Francis IV  
United States Magistrate Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007



Re: Drescher v. City of New York et al, 05 CV 7541 (KMK) (JCF)

Dear Judge Francis:

On behalf of plaintiff and defendants, I write to request a modification of the Case Management Order (CMO) in the above-captioned case, which currently provides for a fact-discovery cut-off date of March 1, 2007. Both sides are exchanging written discovery, but need additional time for fact discovery. Accordingly, plaintiff and defendants jointly request that the Court grant an extension to the CMO deadlines such that fact discovery would be completed by July 1, and the remaining CMO deadlines extended by 6 months. In addition, plaintiff had been *pro se*, but only recently retained an attorney. If this meets with your approval, would you please "so order" it?

Thank you for your time and consideration.

3/17/07  
Application granted as modified.  
No further extensions.  
SO ORDERED

James C. Francis IV

Respectfully submitted,

Fred M. Weiler (FW 5864)

cc: Jeffrey Rothman, Esq. (via e-mail)

USMJ

# **EXHIBIT P**

1

2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

-----x

4 MICHAEL SCHILLER, FRANCESCA FIORENTINI,  
5 ROBERT CURLEY AND NEAL CURLEY,  
Plaintiffs,

6 -against-

7 THE CITY OF NEW YORK;  
8 RAYMOND KELLY, Commissioner  
9 of the New York City Police  
10 Department; TERENCE MONAHAN,  
Assistant Chief of the Bronx  
Bureau of the New York  
City Police Department, et al.,  
Defendants.

-----x

12 December 1, 2005  
13 10:00 a.m.

14

15 Deposition of TERENCE MONAHAN, held  
16 at the offices of NEW YORK CIVIL LIBERTIES  
17 UNION, 125 Broad Street, New York,  
18 New York, before Vicky Galitsis, a Certified  
19 Shorthand Reporter and Notary Public of the  
20 State of New York.

21

22

23

24 GREENHOUSE REPORTING, INC.  
363 Seventh Avenue - 20th Floor  
New York, New York 10001  
25 (212) 279-5108

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 NEW YORK CIVIL LIBERTIES UNION 3 Attorneys for the Plaintiffs 4 125 Broad Street 5 New York, New York 10004 6 BY: CHRISTOPHER DUNN, ESQ., 7 of Counsel 8 9 LESLIE L. LEWIS, ESQ. 10 Attorney for the Plaintiff Concepcion 11 162 West 21st Street, 2 So 12 New York, New York 10011 13 -and- 14 KAREN WOHLFORTH, ESQ. 15 299 Broadway, Suite 1705 16 New York, New York 10007 17 MICHAEL L. SPIEGEL, ESQ. 18 Attorney for the Plaintiffs 19 Abdell, et al 20 111 Broadway, Suite 1305 21 New York, New York 10006 22 ALAN LEVINE, ESQ. 23 Attorney for the 24 Plaintiffs Abdell, et al 25 207 West 106th Street, Suite 11C New York, New York 10025 ALAN D. LEVINE, ESQ. Attorney for the Plaintiffs Meehan, et al 80-02 Kew Gardens Road, Suite 1010 Kew Gardens, New York 11415 JEFFREY A. ROTHMAN, ESQ. Attorney for the Plaintiffs Coburn, et al 575 Madison Avenue, Suite 1006 New York, New York 10022</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES: 2 JAMES J. MEYERSON, ESQ. 3 Attorney for the 4 Plaintiff Carol Dudek and others 5 396 Broadway 6 New York, New York 10013 7 8 NEW YORK CITY LAW DEPARTMENT 9 OFFICE OF THE CORPORATION COUNSEL 10 Attorneys for the Defendants 11 100 Church Street 12 New York, New York 10007-2601 13 BY: JAY A. KRANIS, ESQ. 14 JEFFREY DOUGHERTY, ESQ. 15 FRED M. WEILER, ESQ. 16 17 POLICE DEPARTMENT SPECIAL COUNSEL 18 Attorneys for the Defendants 19 One Police Plaza, Room 1406A 20 New York, New York 10038 21 BY: RUBY MARIN, ESQ. 22 S. ANDREW SCHAEFFER, ESQ. 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: 2 ALLEGAERT BERGER &amp; VOGEL, LLP 3 Attorneys for the 4 Plaintiff Noel Gross o 5 111 Broadway, 18th Floor 6 New York, New York 10006 7 BY: ROBERT F. FINKELSTEIN, ESQ., 8 of Counsel 9 10 MOORE &amp; GOODMAN, LLP 11 Attorneys for the 12 Plaintiffs MacNamara, et al 13 99 Park Avenue, Suite 1600 14 New York, New York 10016 15 BY: DAVID MILTON, ESQ. 16 WILLIAM GOODMAN, ESQ. 17 18 LAW OFFICES OF SUSAN TAYLOR 19 Attorneys of the 20 Plaintiffs Abdell, et al 21 575 Madison Avenue, 10th Floor 22 New York, New York 10022 23 BY: NORMAN BEST, ESQ., 24 Of Counsel 25 26 AMERICAN CIVIL LIBERTIES UNION 27 Attorneys for the 28 Plaintiffs Abdell, et al 29 125 Broad Street, 18th Floor 30 New York, New York 10004-2400 31 BY: RICK BEST, ESQ., 32 of Counsel 33 34 35</p>	<p style="text-align: right;">Page 5</p> <p>1 T. Monahan 2 TERENCE MONAHAN, 3 having been first duly sworn by a 4 Notary Public of the State of 5 New York, was examined and testified 6 as follows: 7 EXAMINATION BY MR. DUNN: 8 Q. Good morning. 9 A. Morning. 10 Q. Thank you for joining us. For 11 better or for worse, this is not going to be a 12 short process. So as Mr. Kranis may have told 13 you, this is going to be more than a one-day 14 event. 15 We are going to go until 16 4 o'clock today, and then we will agree upon a 17 date that's convenient for everyone for the 18 continuation of this deposition. 19 MR. DUNN: The City is 20 representing Chief Monahan, correct? 21 MR. KRANIS: Yes. 22 Q. Chief, have you previously been 23 deposed? 24 A. In this case? 25 Q. No, in any case.</p>

<p style="text-align: right;">Page 70</p> <p>1 T. Monahan</p> <p>2 of how the police would deal with</p> <p>3 demonstration activity.</p> <p>4 A. Yes.</p> <p>5 Q. So what do you recall, if</p> <p>6 anything, him talking about in terms of the</p> <p>7 legal aspects of dealing with demonstrations?</p> <p>8 A. Specifically I cannot recall</p> <p>9 exactly what he said. But I know we did</p> <p>10 discuss stuff along the lines of blocking</p> <p>11 streets, blocking buses, stuff along those</p> <p>12 lines. Exactly what was discussed, I don't</p> <p>13 recall.</p> <p>14 Q. When you talk about blocking</p> <p>15 streets, are you talking about people either</p> <p>16 sitting down or lying in a roadway?</p> <p>17 A. No. Blocking streets, blocking</p> <p>18 it in any way, manner, shape or form.</p> <p>19 Q. In a roadway, is that correct?</p> <p>20 A. Street, building line to</p> <p>21 building.</p> <p>22 Q. Building line to building line.</p> <p>23 So you are including sidewalks within that?</p> <p>24 A. Yes.</p> <p>25 Q. What do you recall, if anything,</p>	<p style="text-align: right;">Page 72</p> <p>1 T. Monahan</p> <p>2 Q. I will show that to you later.</p> <p>3 A. Okay.</p> <p>4 Q. Any other written materials you</p> <p>5 recall receiving during that training?</p> <p>6 A. That's the only one I recall. I</p> <p>7 may have received others, but I do recall</p> <p>8 that.</p> <p>9 Q. What do you recall, if anything,</p> <p>10 about any discussion at that training by Kerry</p> <p>11 Sweet or anyone else about the need for people</p> <p>12 who are walking on a sidewalk to get a permit?</p> <p>13 A. I don't recall him mentioning</p> <p>14 that.</p> <p>15 Q. You said there were three</p> <p>16 training sessions that you believe you</p> <p>17 attended. The first one was approximately the</p> <p>18 Spring of 2004. When was the next one?</p> <p>19 A. The next one was early Summer of</p> <p>20 2004. Early or later summer, maybe end.</p> <p>21 Sometime of July, beginning of July.</p> <p>22 Q. Where did that training take</p> <p>23 place?</p> <p>24 A. Down at headquarters.</p> <p>25 Q. By headquarters, you mean One PP?</p>
<p style="text-align: right;">Page 71</p> <p>1 T. Monahan</p> <p>2 about Captain Sweet saying on this topic?</p> <p>3 A. I don't recall what he said.</p> <p>4 Q. Do you have any general</p> <p>5 recollection about what he said about blocking</p> <p>6 buses?</p> <p>7 A. I don't recall exactly, no.</p> <p>8 Q. Did he make a PowerPoint</p> <p>9 presentation in conjunction with his training?</p> <p>10 A. I don't recall.</p> <p>11 Q. Were you provided with any</p> <p>12 written materials with respect to this</p> <p>13 training session, on any topic?</p> <p>14 A. Yes.</p> <p>15 Q. What materials were you provided?</p> <p>16 A. Legal guidelines.</p> <p>17 Q. Is this a publication by the</p> <p>18 legal bureau about guidelines to be used</p> <p>19 during the convention?</p> <p>20 A. It was a guideline, I believe,</p> <p>21 just of the overall laws regarding free</p> <p>22 speech, public assemblage and of such.</p> <p>23 Q. How many pages would you estimate</p> <p>24 that was?</p> <p>25 A. It was fairly substantial.</p>	<p style="text-align: right;">Page 73</p> <p>1 T. Monahan</p> <p>2 A. Yes.</p> <p>3 Q. Where at One PP did that training</p> <p>4 take place?</p> <p>5 A. The auditorium.</p> <p>6 Q. Was it a full group of people at</p> <p>7 the auditorium?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have any idea how many</p> <p>10 that auditorium seats, approximately?</p> <p>11 A. No.</p> <p>12 Q. Do you have any idea who was in</p> <p>13 attendance at that training? Again I don't</p> <p>14 mean by identity, I mean by category, either</p> <p>15 by rank or type of responsibility, any way</p> <p>16 that you can describe them as a group.</p> <p>17 A. Superior officers from the rank</p> <p>18 of captain up. Who was invited, I'm not sure.</p> <p>19 Q. How long did that training last?</p> <p>20 A. I believe it was a couple of</p> <p>21 hours.</p> <p>22 Q. What was the substance of that</p> <p>23 training?</p> <p>24 A. It was a briefing by the</p> <p>25 intelligence bureau.</p>

19 (Pages 70 to 73)

Page 74	Page 76
<p>1 T. Monahan</p> <p>2 Q. Was that provided by Commissioner</p> <p>3 Cohen?</p> <p>4 A. Yes.</p> <p>5 Q. Did any aspect of that briefing</p> <p>6 concern any aspect of the policing of</p> <p>7 demonstrations?</p> <p>8 A. The policing of, no.</p> <p>9 Q. Again I want to be clear. Any</p> <p>10 aspect of interaction between police officers</p> <p>11 and people involved in protest activity?</p> <p>12 A. No.</p> <p>13 Q. No discussion about that?</p> <p>14 A. No. We had the discussion --</p> <p>15 Q. I take it that means there was no</p> <p>16 discussion about intelligence the police</p> <p>17 department believed it had received about</p> <p>18 potential disruptive behavior in conjunction</p> <p>19 with demonstrations?</p> <p>20 MR. KRANIS: You can answer yes</p> <p>21 or no.</p> <p>22 A. Yes.</p> <p>23 Q. It did include that?</p> <p>24 A. Yes.</p> <p>25 Q. From my perspective, that would</p>	<p>1 T. Monahan</p> <p>2 MR. DUNN: To that extent, that's</p> <p>3 fine.</p> <p>4 Q. Why don't you try to do it within</p> <p>5 those parameters?</p> <p>6 MR. KRANIS: Don't tell them</p> <p>7 anything about what Commissioner Cohen</p> <p>8 told you about the intelligence that he</p> <p>9 had about any groups or about the RNC</p> <p>10 in general.</p> <p>11 MR. DUNN: That's a little too</p> <p>12 broad. You don't want him to disclose</p> <p>13 specific information about specific</p> <p>14 events, that's one thing. But he</p> <p>15 certainly, I think, can talk about --</p> <p>16 he can categorize what was discussed.</p> <p>17 MR. KRANIS: I don't have any</p> <p>18 problem with that.</p> <p>19 MR. DUNN: Let's start with that</p> <p>20 and then we will go and you can tell</p> <p>21 him when to stop.</p> <p>22 MR. KRANIS: Okay. Stop.</p> <p>23 Q. Setting aside what he may have</p> <p>24 said about any particular group or about any</p> <p>25 particular piece of intelligence, what was the</p>
Page 75	Page 77
<p>1 T. Monahan</p> <p>2 include some aspect of the policing of</p> <p>3 demonstrations. Again I want to try to</p> <p>4 emphasize to you when I am asking you</p> <p>5 questions about the policing of demonstrations</p> <p>6 I mean that in the broadest of terms.</p> <p>7 A. Normally I take the concept of</p> <p>8 policing demonstrations, how we're going to</p> <p>9 respond to a group.</p> <p>10 Q. I am talking about everything</p> <p>11 from how you plan, to what you know in</p> <p>12 advance, to how you think about what you are</p> <p>13 going to do, to what you did, to what you did</p> <p>14 after you did it.</p> <p>15 A. Okay.</p> <p>16 Q. What discussion was there at that</p> <p>17 briefing about the policing of demonstrations,</p> <p>18 in the broadest sense?</p> <p>19 MR. KRANIS: To the extent that</p> <p>20 the question asks for and/or the answer</p> <p>21 would require direct recitation or</p> <p>22 advice about what Commissioner Cohen</p> <p>23 told the assemblage on the basis of</p> <p>24 intelligence, I will object and</p> <p>25 instruct the witness not to answer.</p>	<p>1 T. Monahan</p> <p>2 general substance of the information he</p> <p>3 conveyed to you during this briefing as it</p> <p>4 relates to the policing of demonstrations</p> <p>5 during the convention?</p> <p>6 A. Groups that they believe would be</p> <p>7 attending the demonstration, tactics they had</p> <p>8 used in the past.</p> <p>9 Q. Tactics the groups had used?</p> <p>10 A. Yes. A lot of it was on what</p> <p>11 groups he thought were going to be there and</p> <p>12 tactics they had used in the past.</p> <p>13 Q. Just so I'm clear about this, I</p> <p>14 take it from what you are saying that</p> <p>15 Commissioner Cohen is talking about groups</p> <p>16 other than the organizers of an event who</p> <p>17 might show up in an event and then might</p> <p>18 deploy certain tactics that specific group</p> <p>19 showing up at the event had used at some prior</p> <p>20 occasion, is that correct?</p> <p>21 MR. KRANIS: I object to the form</p> <p>22 of the question. Can you just try to</p> <p>23 rephrase it?</p> <p>24 Q. Did you understand what I was</p> <p>25 saying?</p>

20 (Pages 74 to 77)



<p style="text-align: right;">Page 78</p> <p>1 T. Monahan 2 (Record read.) 3 A. I don't know if these were 4 organizers or non-organizers, but these were 5 groups that were showing up. 6 Q. So your recollection was this 7 might have encompassed not only people showing 8 up at someone else's event, but people who are 9 actually planning the event itself? 10 A. Yes. 11 Q. Did the presentation that he made 12 at that time get down to the level of a 13 discussion about particular events? 14 A. No. Can I ask counsel? 15 MR. DUNN: Of course. 16 (Witness and counsel confer.) 17 A. There was mention about a date, 18 August 31st, that the groups had been planning 19 for a day of civil disobedience and potential 20 violence. 21 Q. Beyond August 31st, was there 22 discussion about events scheduled for any 23 other date? 24 A. No. 25 Q. With respect to August 31st</p>	<p style="text-align: right;">Page 80</p> <p>1 T. Monahan 2 on. How much of a focus was on specific 3 groups that might participate in unlawful 4 behavior? 5 A. There was no focus on what groups 6 were going to do unlawful activity on that 7 date. 8 Q. Would it be fair to say, as you 9 recall it, the presentation there was to the 10 effect that the department expected on 11 August 31st that there would be a number of 12 groups who might be engaged in unlawful 13 activity? 14 A. Yes. 15 THE WITNESS: Can we take a break 16 shortly? 17 MR. DUNN: We can take a break 18 right now if you like. 19 (Recess: 11:28 to 11:39 a.m.) 20 BY MR. DUNN: 21 Q. Chief Monahan, was there any 22 discussion, at this training session that 23 we've been discussing, about specific events 24 at which these tactics might be used? 25 A. No.</p>
<p style="text-align: right;">Page 79</p> <p>1 T. Monahan 2 itself, was there discussion about particular 3 groups who might engage in these tactics? 4 MR. KRANIS: You can answer yes 5 or no. 6 (Record read.) 7 A. They were of the opinion that all 8 the groups were going to focus on August 31st. 9 Q. I understand that. I understand 10 you are talking about August 31st. I am 11 talking with respect to that particular date. 12 Was there, as part of 13 Commissioner Cohen's presentation, a 14 discussion of specific groups who on that date 15 the department expected to engage in unlawful 16 tactics? 17 A. As I said, they expected all the 18 groups to participate in unlawful tactics on 19 that date. 20 Q. So are you saying that the 21 expectation was that everyone engaged in a 22 demonstration on August 31st was expected to 23 engage in unlawful behavior? 24 A. No. 25 Q. That's what I'm trying to focus</p>	<p style="text-align: right;">Page 81</p> <p>1 T. Monahan 2 Q. What written materials, if any, 3 were given out at this event? 4 A. None that I recall. 5 Q. Was there a PowerPoint 6 presentation that was made? 7 A. Yes. 8 Q. Was that a PowerPoint 9 presentation that was made in conjunction with 10 Commissioner Cohen's presentation? 11 A. Yes. 12 Q. Other than the presentation that 13 was made about intelligence, was there any 14 other topic discussed at this briefing? 15 A. No. 16 Q. The prior briefing you mentioned 17 Chief McManus had given a presentation about, 18 I think you said, an overview of the RNC. 19 By that were you referring to an 20 overview of the policing of the convention, or 21 are you talking about something broader? 22 A. Something broader; the various 23 portions of the convention, inner perimeter, 24 outer perimeter, transit, hotels, 25 transportation, mobile field forces, the</p>

21 (Pages 78 to 81)



<p style="text-align: right;">Page 242</p> <p>1 T. Monahan</p> <p>2 on it.</p> <p>3 MR. DUNN: This copy I have does</p> <p>4 not have the Bates number on it, but I</p> <p>5 will make sure the record includes a</p> <p>6 statement about the Bates number that's</p> <p>7 on it.</p> <p>8 MR. KRANIS: Okay.</p> <p>9 MR. DUNN: Okay. Off the record.</p> <p>10 (Discussion off the record.)</p> <p>11 MR. DUNN: I just want to note</p> <p>12 for the record that we're going to</p> <p>13 adjourn the deposition now with the</p> <p>14 consent of everyone, and we will</p> <p>15 continue it at a mutually convenient</p> <p>16 date that we will have to designate.</p> <p>17 MR. SPIEGEL: If I may say on the</p> <p>18 record, throughout both this deposition</p> <p>19 and at times during Inspector Galati's</p> <p>20 deposition, instructions not to answer</p> <p>21 questions were issued by Mr. Kranis.</p> <p>22 And while neither I nor any of</p> <p>23 the other plaintiffs' counsel in the</p> <p>24 room spoke up, we will have objected</p> <p>25 collectively to those instructions and</p>	<p style="text-align: right;">Page 244</p> <p>1 T. Monahan</p> <p>2 I, the witness herein, having</p> <p>3 read the foregoing testimony do hereby</p> <p>4 certify it to be a true and correct</p> <p>5 transcript, subject to the corrections,</p> <p>6 if any, shown on the attached page.</p> <p>7</p> <p>8</p> <p>9</p> <p>10 <u>TERENCE MONAHAN</u></p> <p>11</p> <p>12</p> <p>13 Subscribed and sworn to</p> <p>14 before me this _____ day</p> <p>15 of _____, 2005.</p> <p>16</p> <p>17 _____</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 243</p> <p>1 T. Monahan</p> <p>2 we will take them up at later time.</p> <p>3 MR. KRANIS: I understood that</p> <p>4 you did not agree with me.</p> <p>5 (Time noted: 1:35 p.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 245</p> <p>1</p> <p>2 INDEX</p> <p>3 WITNESS EXAMINATION BY PAGE</p> <p>4 T. Monahan Mr. Dunn 5</p> <p>5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 MONAHAN PAGE LINE</p> <p>9 1 Violation, Bates stamped</p> <p>10 SCH 15 231 3</p> <p>11 2 Violation 232 3</p> <p>12</p> <p>13 3 Document Bates stamped</p> <p>14 Schiller 21 and 22 232 22</p> <p>15 4 Document Bates stamped</p> <p>16 SCH 1 and 2 233 20</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

# EXHIBIT Q

1

2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

-----x

4 MICHAEL SCHILLER, et al.,  
5 Plaintiffs,

6 -against-

7 THE CITY OF NEW YORK, et al.,  
8 Defendants.

-----x

9 HACER DINLER, et al.,  
10 Plaintiffs,

11 -against-

12 THE CITY OF NEW YORK, et al.,  
13 Defendants.

-----x

14 July 7, 2006  
15 10:00 a.m.

16

17

18 Deposition of JOSEPH ESPOSITO, held at  
19 the offices of NEW YORK CIVIL LIBERTIES  
20 UNION, 125 Broad Street, New York, New York,  
21 before Vicky Galitsis, a Certified Shorthand  
22 Reporter and Notary Public of the State of  
23 New York.

24

25

26

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28 363 Seventh Avenue - 20th Floor  
29 New York, New York 10001  
30 (212) 279-5108

<p style="text-align: right;">Page 2</p> <p>1 2 APPEARANCES: 3 4 NEW YORK CIVIL LIBERTIES UNION Attorneys for the Plaintiffs 5 Michael Schiller, et al and Hacer Dinler, et al. 6 125 Broad Street New York, New York 10004 7 BY: CHRISTOPHER DUNN, ESQ., -and 8 PALYN HUNG, ESQ. of Counsel 9 10 LAW OFFICES OF SUSAN TAYLOR Attorneys for the Plaintiffs 11 Abdell, et al. 575 Madison Avenue, 10th Floor 12 New York, New York 10022 BY: NORMAN BEST, ESQ., 13 of Counsel 14 15 ALLEGAERT BERGER &amp; VOGEL, LLP Attorneys for the Plaintiff 16 Noel Gross 111 Broadway, 18th Floor 17 New York, New York 10006 BY: ROBERT F. FINKELSTEIN, ESQ., 18 of Counsel 19 20 OLIVER &amp; OLIVER, ESQS. Attorneys for the Plaintiff 21 Dennis Kyne c/o 200 East 10th Street, #917 22 New York, New York 12202 BY: ERIC ADLER, ESQ., 23 of Counsel 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 IT IS HEREBY STIPULATED AND AGREED, 3 by and between the attorneys for the 4 respective parties hereto, that all 5 objections, except as to form, shall be 6 reserved to the time of trial. 7 IT IS FURTHER STIPULATED AND AGREED 8 that the sealing and filing of the within 9 deposition are hereby waived. 10 IT IS FURTHER STIPULATED AND AGREED 11 that the within deposition may be 12 subscribed and sworn to by the witness 13 being examined before a Notary Public 14 other than the Notary Public before whom 15 this deposition was begun. 16 17 -o0o- 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 2 APPEARANCES: (Continued.) 3 ALAN D. LEVINE, ESQ. Attorney for the Plaintiff 4 Greta Smith, et al 80-02 Kew Gardens Road, Suite 1010 5 Kew Gardens, New York 11415 6 7 ZELDA STEWARD, ESQ. Attorney for the Plaintiff 8 Jody Concepcion 299 Broadway, 17th Floor 9 New York, New York 10007 10 11 NEW YORK CITY LAW DEPARTMENT OFFICE OF THE CORPORATION COUNSEL 12 Attorneys for the Defendants 100 Church Street New York, New York 10007-2601 13 BY: PETER FARRELL, ESQ. -and- 14 MARK ZUCKERMAN, ESQ., of Counsel 15 16 17 ANDREW SCHAFER, ESQ. Deputy Commissioner Legal Matters 18 One Police Plaza, Room 140A New York, New York 10038 (present a.m. session) 19 20 21 RUBY MARIN, ESQ. Special Counsel to Deputy 22 Commissioner Legal Matters One Police Plaza, Room 140A 23 New York, New York 10038 (present p.m. session) 24 25 ALSO PRESENT: Brian Derr, NYC Law Department Intern</p>	<p style="text-align: right;">Page 5</p> <p>1 E. Esposito 2 JOSEPH ESPOSITO, 3 having been first duly sworn by a 4 Notary Public of the State of 5 New York, was examined and testified 6 as follows: 7 EXAMINATION BY MR. DUNN: 8 Q. Good morning, Chief Esposito. 9 A. Good morning. 10 Q. A couple of preliminaries. 11 First, as I assume you understand, you're not 12 a defendant in this case. There is no 13 allegation of wrongdoing on your part. 14 When did you learn you would be 15 deposed in this matter? 16 A. I don't remember. 17 Q. Approximately how long ago would 18 you say? 19 A. A couple of months. 20 Q. Since learning you would be 21 deposed, have you had conversations with 22 anyone from inside the police department about 23 this deposition? 24 A. Yes. 25 Q. With whom have you had those</p>

2 (Pages 2 to 5)

<p style="text-align: right;">Page 182</p> <p>1 E. Esposito 2 specifically. That's my point. 3 Q. I understand. Let's be clear 4 about that. I understand you may not remember 5 the particulars as to the when or the where, 6 or even the who was there. 7 But is it correct that as you sit 8 here today, you do recall participating in a 9 meeting where at least Commissioner Kelly was 10 present where this particular decision was 11 made? 12 A. Correct. 13 Q. What was the reason for the 14 department deciding to have a no summons 15 policy during the convention? 16 MR. FARRELL: Objection. He went 17 through all these factors in this 18 morning's testimony. 19 MR. DUNN: He identified a bunch 20 of factors that might be circumstances 21 under which such a decision might be 22 made for a particular event. It wasn't 23 particular to the convention. 24 MR. FARRELL: He spent a 25 considerable amount of time testifying</p>	<p style="text-align: right;">Page 184</p> <p>1 E. Esposito 2 We knew from intelligence sources 3 that a lot of people with past criminal 4 history would come in and attempt violent 5 acts. There was a threat of terrorism, that 6 intel was telling us this would be a good 7 venue for a terrorist attack. 8 We want to stop the criminal 9 activity from continuing. A C summons is not 10 the best way to do that many times. I think 11 that's all. I may have missed one or two. 12 Q. Okay. Were these considerations 13 that were discussed at this meeting where the 14 decision was made? 15 A. Yes. The best possible 16 prosecution was taken into consideration. You 17 need a proper identification to go forward 18 with a prosecution. Especially if a lot of 19 these people were coming in from out of the 20 City. 21 Q. I take it that the issue of 22 giving summonses to people who were from out 23 of the City or out of state is an issue that 24 the police department deals with every day? 25 A. That's correct.</p>
<p style="text-align: right;">Page 183</p> <p>1 E. Esposito 2 about those factors. You can ask him 3 if any of those factors weren't 4 applicable. 5 You asked him quite a lengthy 6 series of questions about the reasons 7 why a no summons policy was utilized. 8 MR. DUNN: No, it was not a 9 question about the convention. It was 10 a question about the general policy. 11 Q. Chief Esposito, why was a no 12 summons policy adopted for the convention? 13 MR. FARRELL: I'm going to object 14 and I'm going to put a note on the 15 record that he's previously testified 16 about the reasons why. 17 A. Okay. There is a number of 18 reasons why. Information about -- from 19 intelligence, open sources that people were 20 going to come to the City during the RNC for 21 the purpose of shutting down the City, 22 shutting down the RNC, committing criminal 23 acts. They were going to come with false IDs, 24 with no IDs. A lot of people from out of 25 state would come in.</p>	<p style="text-align: right;">Page 185</p> <p>1 E. Esposito 2 Q. Is it fair to say that the 3 department's standard summons policies and 4 procedures specifically take into account 5 considerations about people being from out of 6 the City or out of the state? 7 MR. FARRELL: Objection. 8 A. I'm sorry? 9 (Question read.) 10 A. Yes. 11 Q. Did you and Commissioner Kelly 12 and perhaps First Deputy Commissioner Grosso 13 give any consideration to applying this policy 14 to particular events, as opposed to the entire 15 RNC? 16 MR. FARRELL: Objection. 17 A. Every incident is separate from 18 the other. An incident commander could have 19 made any recommendation he or she wanted. An 20 incident commander on the scene of an incident 21 could have made a recommendation. But we have 22 to rely on our incident commanders for the 23 best course of action. 24 Q. I understand that. But this is a 25 decision that was not made by an incident</p>

47 (Pages 182 to 185)

<p style="text-align: right;">Page 186</p> <p>1 E. Esposito 2 commander, this was a decision that was made 3 by you and Commissioner Kelly. 4 A. Right. 5 Q. What I'm asking you is, when the 6 two of you made this decision, what 7 consideration, if any, did you give to having 8 this policy apply to particular events where 9 there were particular concerns as opposed to 10 having it apply throughout the convention to 11 all events? 12 A. That's always an option. 13 MR. FARRELL: Objection. 14 Q. Is that an option that you 15 considered? 16 MR. FARRELL: Objection. If you 17 are asking him about his discussions 18 with Commissioner Kelly as a 19 deliberative process as to why this was 20 adopted, you can ask him what the 21 policy was and why they adopted it. 22 He's given you both. 23 I think you're trying to get at 24 the conversations leading up to the 25 adoption of the policy. And I'm going</p>	<p style="text-align: right;">Page 188</p> <p>1 E. Esposito 2 there would be a no summons policy during the 3 convention, that they were also informed or 4 otherwise would have known that they 5 nonetheless would have had the discretion to 6 issue summonses to people? 7 MR. FARRELL: Objection. 8 A. It's always an option. They can 9 always bring that to our attention. Was it 10 articulated? It doesn't have to be 11 articulated. 12 Q. What does that mean? For 13 instance, let's just take an example. We had 14 a client whose case we settled, so it's not a 15 case anymore. A single person who got 16 arrested standing on the sidewalk, they went 17 to Pier 57. 18 If the captain who had ordered 19 that arrest had been inclined to give this 20 woman a summons who was charged with blocking 21 the sidewalk or standing on it, what would he 22 have to have done to get permission to make an 23 exception to the no summons policy? 24 MR. FARRELL: Objection. 25 A. Bring it to a supervisor's</p>
<p style="text-align: right;">Page 187</p> <p>1 E. Esposito 2 to assert the deliberative process on 3 behalf of the City. 4 It's clearly stated what the 5 policy was, and he articulated twice 6 now, once this morning and once this 7 afternoon, the reasons why the policy 8 was adopted. 9 Q. Chief Esposito, do you recall if 10 at the time this decision was made that you 11 believed that the concerns that you mentioned 12 were concerns that would apply to every single 13 planned RNC event? 14 A. Generally speaking, this would be 15 the policy. But incident commanders, anybody 16 on the scene could bring it to our attention 17 that they wanted to not put somebody into the 18 system and give a DAT. 19 We give our commanders a lot of 20 leeway to make the decisions based on the 21 facts at that particular incident. We're not 22 at every incident, we have to rely on our 23 incident commanders. 24 Q. Is it your testimony that when 25 the operations people were instructed that</p>	<p style="text-align: right;">Page 189</p> <p>1 E. Esposito 2 attention. 3 Q. What supervisor did you 4 understand had the authority to make the 5 exception to the no summons policy you and 6 Commissioner Kelly made? 7 A. Every situation is different. 8 Q. I understand every situation is 9 different. I'm trying to understand who would 10 have had the authority to say -- 11 A. Depending on the situation, it 12 could have been that captain or it could have 13 been me. It depends on the circumstances that 14 are developing as that situation is unfolding. 15 Q. So I want to understand what the 16 circumstances would have been at the 17 convention, in which a captain could have 18 decided to make an exception to the no summons 19 policy that you and Commissioner Kelly made. 20 A. We're talking hypothetically. 21 MR. FARRELL: Objection. 22 A. What I'm telling you is that a 23 captain could articulate to me a circumstance 24 where he gave or she gave a summons. 25 Chief, I gave this summons</p>

<p style="text-align: right;">Page 190</p> <p>1 E. Esposito 2 because A, B, C, and D. 3 Okay. Or I'd say, I don't like 4 it, don't do it again. 5 So every situation is different. 6 And if articulated it can be approved or not 7 approved. 8 Q. Do you know of a single instance 9 in which a summons was given to anyone 10 arrested in conjunction with the convention? 11 MR. FARRELL: Objection. 12 A. I don't recall any. There may 13 have been, I don't recall. 14 Q. I want to go back to the decision 15 that you and Commissioner Kelly made. The 16 question I started with was at the time you 17 made that decision, did you have reason to 18 believe that the factors that you identified 19 as the basis for the policy applied to, in 20 some form, every single event that was 21 scheduled to take place during the convention? 22 MR. FARRELL: Objection. 23 A. Again every event is individual. 24 As I've said, we leave it to the incident 25 commander.</p>	<p style="text-align: right;">Page 192</p> <p>1 E. Esposito 2 incident that can be judged a number of 3 different ways. It was a general policy that 4 no C summonses would be issued. That's how we 5 go into it. 6 There are exceptions to the 7 policy. And we leave that to the incident 8 commander at whatever venue he or she is at to 9 say the general rule is no C summonses, we're 10 going to DATs. Or if they want to articulate 11 an exception, they can. 12 And I don't doubt that they did. 13 I just don't have it here. You're saying they 14 didn't. I don't know. Maybe they did. 15 Q. Let's start with the UFPJ event 16 that was the big march on Sunday. 17 A. Sunday the 29th? 18 Q. The 29th. That's exactly the 19 date. 20 Which of the concerns which you 21 articulated as being the basis of the policy 22 were concerns that you had with respect to 23 that particular event? 24 MR. FARRELL: Objection. He's 25 identified these reasons as the basis</p>
<p style="text-align: right;">Page 191</p> <p>1 E. Esposito 2 Q. But in this incident you didn't 3 leave it to the incident commanders, you 4 established a policy for the entire 5 convention? 6 A. General policy, that's correct. 7 Q. General policy. So it was a 8 general policy that apparently was adhered to 9 with respect to all 1800 and some odd arrests 10 that took place during the convention? 11 A. I don't know. There may have 12 been summonses. 13 Q. There may have been, not that any 14 of us knows of. 15 MR. FARRELL: Objection. 16 A. I don't know, I haven't checked. 17 Q. The question I'm asking you is 18 when you made the decision to have a general 19 policy, did you have reason to believe at that 20 time that the concerns that you articulated as 21 justifying the policy, were concerns that were 22 applicable to all of the events that were 23 scheduled to take place during the convention? 24 MR. FARRELL: Objection. 25 A. Every incident is an individual</p>	<p style="text-align: right;">Page 193</p> <p>1 E. Esposito 2 for adopting the policy. He said that 3 they applied it to the entire RNC 4 period. He hasn't specified it by 5 event. 6 MR. DUNN: Well, now I'm asking 7 him to. 8 MR. FARRELL: If you understand 9 the question -- again, I don't 10 understand the question. Objection. 11 A. Are you saying which of my 12 reasons that helped my decision to make no 13 C summonses came into play during this event, 14 is that what you're saying? 15 Q. That's not quite what I'm saying. 16 Let's start with that. We can start with that 17 one. 18 A. Okay. 19 MR. FARRELL: Objection. 20 A. Give me the question again, 21 please. I'm sorry. 22 Q. Which, if any, of the concerns 23 that you identified as being justifications 24 for the no C summonses policy during the 25 convention were concerns that you specifically</p>



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1 E. Esposito  
 2 had with respect to the United for Peace and  
 3 Justice event scheduled for August 29th?  
 4 A. They all had potential.  
 5 Q. They all had potential for what?  
 6 A. To be part of that event. All  
 7 the concerns that I talked about had potential  
 8 to be involved with that event.  
 9 Q. So for instance, you started off  
 10 by saying if you had intelligence or  
 11 information, the people were coming for the  
 12 purpose of shutting down the RNC?  
 13 A. Correct.  
 14 Q. What was it about this event that  
 15 led you to believe that participants in this  
 16 event were there to shut down the RNC, which  
 17 was not scheduled to start until the next day?  
 18 A. The intelligence that we got,  
 19 that that is what a large part of the  
 20 demonstrators coming to New York City were  
 21 going to try and do.  
 22 Was it beyond the realm of  
 23 responsibility that they would crash through  
 24 the front of the Garden, that we let them  
 25 march, take it over?

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1 E. Esposito  
 2 Q. As soon as they did that, they  
 3 would it not be eligible for a summons?  
 4 A. That's correct.  
 5 Q. We have to remember we're  
 6 focusing on people that were getting charged  
 7 with things like disorderly conduct and  
 8 parading without a permit.  
 9 A. I'm looking at the whole event,  
 10 I'm looking at the potential with those things  
 11 that I articulated. That's how I police it,  
 12 by looking at the whole event taking those  
 13 things into consideration.  
 14 Q. When a decision was made about  
 15 adopting a no summons policy, were there any  
 16 documents that were prepared that spelled out  
 17 the justifications for that policy?  
 18 A. I don't think so. Not that I  
 19 recall.  
 20 Q. Were there any documents that you  
 21 recall discussing any aspect of the decision  
 22 to adopt a no summons policy?  
 23 A. Not that I recall.  
 24 Q. When the decision was made to  
 25 have a no summons policy, was there a

1 E. Esposito  
 2 discussion about the impact that would have on  
 3 the length of time people would be kept in  
 4 police custody?  
 5 A. Yes.  
 6 Q. Was it recognized then that the  
 7 people would be in police custody much longer  
 8 than if the policy were not in place?  
 9 MR. FARRELL: Objection.  
 10 A. They would be in the system  
 11 longer, they would be in our custody longer.  
 12 Yeah, that was recognized.  
 13 Q. Was that recognized by  
 14 Commissioner Kelly?  
 15 A. Yes.  
 16 Q. At the time that the decision was  
 17 made about there being a no summons policy for  
 18 the convention, was there a discussion about  
 19 the impact it would have on the resources  
 20 needed to process arrestees?  
 21 A. Yes.  
 22 Q. Was it recognized that greater  
 23 resources would be needed, since everyone  
 24 would be going at least through a DAT step?  
 25 A. Yes.

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1 E. Esposito  
 2 Q. What, if any, decisions were made  
 3 to address the need for additional arrest  
 4 processing resources, given the no summonses  
 5 policy?  
 6 A. What steps were taken?  
 7 (Question read.)  
 8 A. We developed the system that was  
 9 put in place to process the arrests.  
 10 Q. I take it by that you mean that  
 11 the arrest processing plan that was put  
 12 together by the department was specifically  
 13 done in recognition of the fact that the no  
 14 summonses policy would require additional  
 15 arrest processing resources?  
 16 A. No. That was one of the aspects.  
 17 Q. I don't mean that was the sole  
 18 consideration.  
 19 A. That's what you said.  
 20 Q. If I did, I didn't mean to say  
 21 that.  
 22 A. Okay.  
 23 Q. That was one of the  
 24 considerations in the design of the arrest  
 25 process for the convention?

50 (Pages 194 to 197)



<p style="text-align: right;">Page 354</p> <p>1 J. Esposito</p> <p>2 A. I am sorry?</p> <p>3 Q. In the normal circumstance outside</p> <p>4 of a mass-arrest situation, outside of a</p> <p>5 demonstration-related situation, when somebody</p> <p>6 is arrested for a violation for a</p> <p>7 quality-of-life crime, they are issued a</p> <p>8 summons, they are not issued a Desk Appearance</p> <p>9 Ticket or put through the system if they are</p> <p>10 summons-eligible, correct?</p> <p>11 MR. FARRELL: Objection.</p> <p>12 A. If they are eligible, correct.</p> <p>13 Q. And they spend maybe a hour in</p> <p>14 custody based upon that, correct?</p> <p>15 MR. FARRELL: Objection.</p> <p>16 A. For a C summons?</p> <p>17 Q. Yes. For the processing didn't you</p> <p>18 say that usually took around a hour?</p> <p>19 A. It depends. You know, we do warrant</p> <p>20 checks now. So it could be 10 minutes. It</p> <p>21 could be up to a hour. I think that is the</p> <p>22 longest.</p> <p>23 Q. But that is the time area we are</p> <p>24 talking about, 10 minutes, an hour, somewhere in</p> <p>25 that area?</p>	<p style="text-align: right;">Page 356</p> <p>1 J. Esposito</p> <p>2 in a normal situation, a non-mass situation, if</p> <p>3 somebody is arrested for Parading Without a</p> <p>4 Permit or Disorderly Conduct Subsection 5 or</p> <p>5 Disorderly Conduct Subsection 6 and they were</p> <p>6 summons-eligible, no problems with their</p> <p>7 identification or anything like that, they would</p> <p>8 normally receive their summonses in somewhere in</p> <p>9 the area of 10 minutes to an hour, correct?</p> <p>10 MR. FARRELL: Objection.</p> <p>11 A. For Disorderly Conduct, yes. I'm</p> <p>12 not sure for Parading Without a Permit.</p> <p>13 Q. Let's just take Disorderly Conduct</p> <p>14 since you are sure about that. During the</p> <p>15 Republican National Convention, somebody</p> <p>16 arrested for Disorderly Conduct Subsection 5 or</p> <p>17 6 could have spend 24 hours, 36 hours, 48 hours</p> <p>18 in custody before being released for that same</p> <p>19 offense, correct?</p> <p>20 A. Correct.</p> <p>21 MR. FARRELL: Objection.</p> <p>22 A. Correct.</p> <p>23 Q. Is it ever appropriate to arrest</p> <p>24 somebody if they hadn't committed a crime?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 355</p> <p>1 J. Esposito</p> <p>2 A. I think an hour is somewhat in the</p> <p>3 longest.</p> <p>4 Q. Certainly not 24 hours?</p> <p>5 A. Correct.</p> <p>6 Q. And certainly not 48 hours?</p> <p>7 A. Correct.</p> <p>8 Q. During the Republican National</p> <p>9 Convention people were spending 24 hours in jail</p> <p>10 or 48 hours in jail arrested for offenses that</p> <p>11 normally they would receive a C summons for and</p> <p>12 be out in the area of about 10 minutes to an</p> <p>13 hour, no?</p> <p>14 MR. FARRELL: Objection.</p> <p>15 A. No.</p> <p>16 Q. Explain the distinction. Is that</p> <p>17 because -- explain why not, sir?</p> <p>18 A. Because you are equating an</p> <p>19 individual with a quality-of-life offense on the</p> <p>20 street to a what you call a mass-arrest</p> <p>21 situation. Mass-arrest situation prior to the</p> <p>22 RNC the vast majority were no-C-summons strategy</p> <p>23 enforcement.</p> <p>24 Q. Let me stop you there.</p> <p>25 Is not the comparison I was making</p>	<p style="text-align: right;">Page 357</p> <p>1 J. Esposito</p> <p>2 Q. What intelligence did you have that</p> <p>3 suggested that people were coming to engage in</p> <p>4 continuous unlawful conduct?</p> <p>5 A. Briefings from my Intelligence</p> <p>6 Division, briefing and information from my</p> <p>7 Intelligence --</p> <p>8 Q. Given directly to you?</p> <p>9 A. Yes.</p> <p>10 Q. And given to your subcommittee?</p> <p>11 A. At times.</p> <p>12 Q. What intelligence information was</p> <p>13 given to you specifically about people</p> <p>14 continuing to engage in continuous unlawful</p> <p>15 acts?</p> <p>16 A. Just that.</p> <p>17 Q. Well, what acts and what people and</p> <p>18 where?</p> <p>19 A. I don't recall right now.</p> <p>20 Q. You don't have any details at all in</p> <p>21 your memory about any of the intelligence</p> <p>22 specifics that underlaid the intelligence</p> <p>23 conclusion that people were coming to engage in</p> <p>24 continuous unlawful activity?</p> <p>25 MR. FARRELL: Objection.</p>

26 (Pages 354 to 357)

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1 J. Esposito

2 A. What you are saying was articulated  
3 to me, that groups were going to come into the  
4 City and engage in lawful activity, a variety of  
5 unlawful activity. Everything from possible  
6 bombing to assaults to civil disobedience.

7 Q. Who was in charge of gathering this  
8 information and briefing you from the  
9 Intelligence Division?

10 A. Well, the Commissioner of  
11 Intelligence, David Cohen, is the number one  
12 person, but at other times members of his staff  
13 would brief me.

14 Q. Can you remember the names of any of  
15 his staff members who briefed you in  
16 intelligence issues in anticipation of the  
17 Republican National Convention?

18 A. Kevin Perham, P-E-R-H-A-M. I forget  
19 the others.

20 Q. How many times were you briefed  
21 independently in a one-on-one conversation by  
22 either Mr. Cohen or his subordinates within the  
23 Intelligence Division about intelligence matters  
24 regarding the Republican National Convention?

25 A. I don't recall now.

1 J. Esposito

2 Q. When you say intelligence, does that  
3 include information garnered from open sources,  
4 do you make a distinction between open sources  
5 of information and intelligence that is  
6 gathered?

7 A. I am talking about both.

8 Q. So within that category, just so we  
9 are on the same page in terms of terminology, is  
10 it fair to say non-open source intelligence and  
11 intelligence based upon open source?

12 A. Yes.

13 Q. Do you have any specific  
14 recollection of any of the specific individuals  
15 who were expected to come to New York City  
16 during the Republican National Convention and  
17 engage in continuous unlawful activity?

18 MR. FARRELL: Objection.

19 A. At the time --

20 MR. FARRELL: I want to consult with  
21 my client and see if that calls for any  
22 law enforcement privilege.

23 (Recess taken.)

24 THE WITNESS: I am sorry. Will you  
25 repeat it.

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Page 361

1 J. Esposito

2 Q. Would you estimate it at more than  
3 five, less than five?

4 A. More than five.

5 Q. More than ten?

6 A. It's tough to guess.

7 Q. Well, about 50 times or somewhere in  
8 the area of five to a dozen, some estimate of  
9 the amount of time?

10 MR. FARRELL: Objection. If you  
11 know.

12 A. More than five. That is for sure.

13 Q. These are one-on-one conversations,  
14 correct?

15 A. Yes.

16 Q. How many times did the Intelligence  
17 Division, Mr. Cohen or one of his subordinates  
18 brief the Executive Committee about intelligence  
19 that has been garnered with regard to the  
20 Republican National Convention and what was  
21 expected to be coming during --

22 A. More than five.

23 Q. The same, if you give me an upper  
24 amount?

25 A. No, I couldn't.

1 J. Esposito

2 MR. ROTHMAN: Could you read it  
3 back.

4 (Record read.)

5 A. I don't recall the specific names.  
6 Names were given to me. I don't recall them  
7 now.

8 Q. How many times were you briefed  
9 personally by Mr. Cohen on this subject?

10 MR. FARRELL: Objection.

11 A. I don't recall.

12 Q. Less than five?

13 MR. FARRELL: Objection.

14 A. I would say more than five, but  
15 other than that I really couldn't give an  
16 educated guess.

17 Q. How many times did Mr. Cohen brief  
18 the Executive Committee on this subject of  
19 intelligence related to the Republican National  
20 Convention?

21 MR. FARRELL: Objection.

22 A. I don't recall.

23 Q. Again more than five, you would  
24 estimate?

25 A. Yes.

27 (Pages 358 to 361)

<p style="text-align: right;">Page 362</p> <p>1 J. Esposito</p> <p>2 Q. In terms of number of weeks or</p> <p>3 months before the Convention, when did these</p> <p>4 intelligence briefings begin, either personally</p> <p>5 to you or to the Executive Committee?</p> <p>6 A. I don't recall.</p> <p>7 Q. Can you say that they began in 2004</p> <p>8 or earlier than that?</p> <p>9 MR. FARRELL: Objection.</p> <p>10 A. They began almost immediately after</p> <p>11 it was determined that we were getting the</p> <p>12 Convention.</p> <p>13 Q. How frequently did they occur?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did they increase in frequency as</p> <p>16 the Convention approached?</p> <p>17 A. Yes.</p> <p>18 Q. What intelligence that you received</p> <p>19 suggested that people were coming to shut down</p> <p>20 venues relating to the Republican National</p> <p>21 Convention?</p> <p>22 A. Just that, Intelligence Division</p> <p>23 would brief us as they were getting</p> <p>24 information.</p> <p>25 Q. Again, do you remember any specifics</p>	<p style="text-align: right;">Page 364</p> <p>1 J. Esposito</p> <p>2 intelligence about people wanting to shut down</p> <p>3 or prevent or obstruct the ingress or egress of</p> <p>4 delegates into Broadway theaters?</p> <p>5 A. Yes.</p> <p>6 Q. Who gave you that information?</p> <p>7 A. Someone from the Intelligence</p> <p>8 Division.</p> <p>9 Q. Do you remember who?</p> <p>10 A. No.</p> <p>11 Q. Do you remember where?</p> <p>12 A. No.</p> <p>13 Q. Do you remember any specifics about</p> <p>14 what theaters or what was expected with regard</p> <p>15 to that?</p> <p>16 A. Just the theaters that the delegates</p> <p>17 were to go to. I don't remember specifically</p> <p>18 which ones.</p> <p>19 Q. What were the main hotels where the</p> <p>20 delegates were staying at?</p> <p>21 A. I don't remember.</p> <p>22 Q. Did you have any personal</p> <p>23 interaction with any of the delegates during the</p> <p>24 Republican National Convention?</p> <p>25 A. Not that I recall.</p>
<p style="text-align: right;">Page 363</p> <p>1 J. Esposito</p> <p>2 at all with regard to what venues people were</p> <p>3 going to be trying to shut down, which people</p> <p>4 were going to shut them down, when they were</p> <p>5 going to try to shut them down and in what</p> <p>6 manner they were going to try to shut them</p> <p>7 down?</p> <p>8 A. Blocking streets, blocking</p> <p>9 entrances, events that the delegates were going</p> <p>10 to go to, chaining themselves, sitting down.</p> <p>11 Q. At what venues?</p> <p>12 A. Just about every venue that the</p> <p>13 information was. They would go to the venues</p> <p>14 that the delegates were going to be at. It was</p> <p>15 more or less generic.</p> <p>16 Q. Do you remember any specific</p> <p>17 intelligence about people going to shut down</p> <p>18 delegate-related venues on August 29th in the</p> <p>19 Times Square area?</p> <p>20 A. What day of the week was that?</p> <p>21 Q. It was a Sunday, the day of the</p> <p>22 large demonstration by United for Peace and</p> <p>23 Justice?</p> <p>24 A. I am not sure.</p> <p>25 Q. Do you remember any specific</p>	<p style="text-align: right;">Page 365</p> <p>1 J. Esposito</p> <p>2 Q. What intelligence suggested that</p> <p>3 violent criminals were coming New York to engage</p> <p>4 in violent activity or to engage in civil</p> <p>5 disobedience?</p> <p>6 A. Information that was given to me</p> <p>7 from the Intelligence Division.</p> <p>8 Q. Again, do you remember any specifics</p> <p>9 at all about which violent criminals, about what</p> <p>10 violent acts were expected where and when they</p> <p>11 were expected to occur?</p> <p>12 A. I can't recall the names.</p> <p>13 Q. About how many individuals were</p> <p>14 individuals of concern in the run-up to the</p> <p>15 Republican National Convention?</p> <p>16 A. I don't remember.</p> <p>17 Q. There were some people who were</p> <p>18 designated as individuals of concern, correct?</p> <p>19 MR. FARRELL: Objection.</p> <p>20 A. Yes.</p> <p>21 Q. About how many were designated as</p> <p>22 individuals of concern?</p> <p>23 A. I don't recall at all.</p> <p>24 Q. Were any lists or photo displays</p> <p>25 made depicting these individuals of concern?</p>

28 (Pages 362 to 365)

<p style="text-align: right;">Page 466</p> <p>1 J. Esposito</p> <p>2 Chief Colegan, would work alongside by him and</p> <p>3 be brought up to speed?</p> <p>4 MR. FARRELL: Objection.</p> <p>5 A. No. What I'm saying, you wouldn't</p> <p>6 relieve Devlin and bring Colegan in. If you are</p> <p>7 going to bring Colegan in, let him work with</p> <p>8 Devlin until Devlin leaves. I don't think we</p> <p>9 would have relieved Devlin if he was still</p> <p>10 working.</p> <p>11 Q. Why would you have wanted Colegan to</p> <p>12 work with Devlin?</p> <p>13 MR. FARRELL: Objection.</p> <p>14 A. To get up to speed.</p> <p>15 Q. Did you, at any time, have any</p> <p>16 conversations with Inspector Morris about RNC</p> <p>17 arrest planning prior to the RNC?</p> <p>18 A. I forget when he came on board for</p> <p>19 the RNC.</p> <p>20 Q. Do you remember why Morris in</p> <p>21 particular was chosen to work on this project?</p> <p>22 A. Very well thought of. I believe he</p> <p>23 is an attorney. I just think we saw things in</p> <p>24 his background that we liked.</p> <p>25 Q. Do you know if he ever worked with</p>	<p style="text-align: right;">Page 468</p> <p>1 J. Esposito</p> <p>2 A. Intel would do a lot of it.</p> <p>3 Operations would do a lot of it. We would just</p> <p>4 get briefed on what happened day before.</p> <p>5 Q. Who from intel would give those</p> <p>6 briefings?</p> <p>7 A. Usually Cohen. We would have</p> <p>8 somebody there with him giving us the details of</p> <p>9 what happened the day before. McManus, Chief</p> <p>10 McManus who is the RNC coordinator, would be</p> <p>11 there naturally.</p> <p>12 Q. And the Operations Division, are</p> <p>13 they within the Patrol Services Division?</p> <p>14 A. They answer to the Chief of the</p> <p>15 Department.</p> <p>16 Q. Are they Patrol Services?</p> <p>17 A. No, Chief of the Department's</p> <p>18 office.</p> <p>19 Q. What is their general duties?</p> <p>20 A. They coordinate all of the citywide</p> <p>21 plans, activities details. They are the central</p> <p>22 depository for what is going on around the City.</p> <p>23 Q. Sort of an overview of all of the</p> <p>24 different police operations?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 467</p> <p>1 J. Esposito</p> <p>2 the Legal Bureau?</p> <p>3 A. I don't know.</p> <p>4 Q. You said that RNC arrests would be</p> <p>5 reported to the Command Center. What Command</p> <p>6 Center were you referring to, sir?</p> <p>7 A. Emergency Operations Center, the</p> <p>8 EOC, police headquarters. We have a big</p> <p>9 conference room. All of the agencies that were</p> <p>10 working with the RNC were represented there, and</p> <p>11 there is a sort of a central depository for all</p> <p>12 activity.</p> <p>13 Q. Did you spend a fair amount of time</p> <p>14 within that Emergency Operations Center during</p> <p>15 the Republican National Convention?</p> <p>16 A. No.</p> <p>17 Q. Where did you spend the bulk of your</p> <p>18 time during the RNC period? Was it out on the</p> <p>19 street? Was it at a command office? What were</p> <p>20 you actually doing most of the time? How did</p> <p>21 you organize your days?</p> <p>22 A. We get briefed in the morning on</p> <p>23 what happened the day before. We get daily</p> <p>24 briefings.</p> <p>25 Q. By whom?</p>	<p style="text-align: right;">Page 469</p> <p>1 J. Esposito</p> <p>2 Q. The coordination between the --</p> <p>3 A. Bureaus, other City agencies,</p> <p>4 outside City agencies. Anything going on in the</p> <p>5 City would go through them.</p> <p>6 Q. They would give you daily briefings</p> <p>7 as well as to what occurred on the prior day?</p> <p>8 A. They would be part of a briefing</p> <p>9 process, yes.</p> <p>10 Q. Would these briefings be given at</p> <p>11 the same time or --</p> <p>12 A. Generally we try to get them down</p> <p>13 early in the morning, 8, 9 o'clock I believe</p> <p>14 they were.</p> <p>15 Q. Was that in the Commissioner's</p> <p>16 conference room?</p> <p>17 A. Most of the time they were in the</p> <p>18 Commissioner's conference room.</p> <p>19 Q. How long would they take?</p> <p>20 A. It varied.</p> <p>21 Q. Were there any written documents</p> <p>22 that were generated as a result of that?</p> <p>23 A. At times there may -- intel would</p> <p>24 have some documents at times. A lot of times it</p> <p>25 would be Operations. Operations may generate a</p>



Page 711

Page 713

1 J. Esposito

2 MR. FARRELL: Objection.

3 Q. What about the fact that you were  
4 arresting people involved in demonstrations made  
5 you adopt a no summons rule for people who  
6 presumably were arrested in non-demonstration  
7 related events at the same time elsewhere in the  
8 city were eligible for summons?

9 MR. FARRELL: Objection. Can you  
10 read that question back, please.

11 (The record was read.)

12 Q. What is it about the fact that  
13 somebody's being arrested at a demonstration led  
14 you to conclude that a no summons policy should  
15 be issued for an RNC related arrest when at the  
16 same time throughout the city people arrested for  
17 a non-RNC related event would be issued a summons  
18 if eligible?

19 MR. FARRELL: Objection.

20 A. If I heard it right, we gave out  
21 C-Summons in other parts of the city for  
22 non-RNC related --

23 Q. Presumably, yes.

24 A. -- while at the same time at the RNC  
25 related event we had a no C-Summons policy?

Page 712

Page 714

1 J. Esposito

2 Q. Right.

3 A. Just for all the reasons I  
4 articulated, all the information we were getting  
5 about the RNC.

6 Q. That information being what?

7 A. What I just said about the RNC --

8 MR. FARRELL: Objection. Asked and  
9 answered.

10 A. -- being -- well, it's a national  
11 security incident, a special security event, and  
12 that raised up our level of concern. The  
13 information we got about people coming into the  
14 city for the purpose of shutting the city down,  
15 for the purpose of shutting the RNC down, for the  
16 purpose of destroying property, attacking  
17 businesses, the possibility of a terrorist  
18 attack, the possibility of false identification,  
19 the probability of false identification.

20 Q. Now, all these factors that you  
21 mentioned, were they contained in some kind of  
22 intelligence briefing that you received?

23 A. Yes.

24 Q. Was this in written form or was it  
25 orally?

1 J. Esposito

2 MR. FARRELL: Objection.

3 A. Both, I believe.

4 Q. From whom did you receive that --  
5 you don't have to tell me specifically what it  
6 was -- but from whom did you receive that  
7 intelligence briefing?

8 A. The intelligence division.

9 Q. And that would be at the time and  
10 maybe still is, headed by Commissioner Cohen?

11 A. That's correct.

12 Q. And all those factors that you  
13 mentioned were factors that were identified in  
14 this briefing which you relied upon and adopted a  
15 no summons rule?

16 MR. FARRELL: Objection.

17 A. Yes.

18 Q. What changes in policing --  
19 withdrawn. Did the fact that this event, the  
20 RNC, was designated a national special security  
21 event -- and you know what that is, right?

22 A. Yes.

23 Q. Did that fact mandate that you  
24 change your policing procedures in any way?

25 MR. FARRELL: Objection.

1 J. Esposito

2 A. No.

3 Q. With the intelligence you had with  
4 respect to the intention of people to shut down  
5 the city and shut down the RNC -- I believe those  
6 were your words -- were there any specific  
7 credible allegations of that or was that just a  
8 general concern expressed by the intelligence  
9 division? I'm not asking what the specific  
10 concerns were, I'm just asking whether it was  
11 specific or whether it was just a general concern  
12 that that might happen?

13 MR. FARRELL: Objection.

14 A. I believe it was a concern based on  
15 intelligence they had gathered.

16 Q. Specific intelligence?

17 MR. FARRELL: Objection.

18 A. I believe so.

19 Q. Did you review that intelligence or  
20 was that a recommendation that was given to you,  
21 this is like George Bush, were there weapons of  
22 mass destruction -- no, that's off the record --

23 A. That was a potential.

24 Q. Was that information, did you review  
25 the specific intelligence of -- that indicated

10 (Pages 711 to 714)

<p style="text-align: right;">Page 775</p> <p>1 J. Esposito 2 be they be eligible for a summons? 3 MR. FARRELL: Can you read that back 4 for me. 5 (The record was read.) 6 Q. Are you aware of any such policy in 7 the police department prior to the RNC? 8 MR. FARRELL: Objection. If you 9 understand it. 10 A. Online and a C-Summons only if the 11 incident commander okayed it? 12 Q. Right. 13 A. Online referring to what? 14 Q. You tell me. 15 MR. FARRELL: Objection. 16 A. Well, what's your understanding of 17 online? 18 Q. Well, let me ask you what your 19 understanding of online is? 20 A. Online to me is usually above DAT, 21 when you're being processed for a complaint 22 before a judge. 23 Q. Are you aware of any such policy, 24 given that definition of online, were you aware 25 of such policy prior to the RNC?</p>	<p style="text-align: right;">Page 777</p> <p>1 J. Esposito 2 MR. MOORE: I have nothing further. 3 Thank you, Chief Esposito. 4 MR. FARRELL: All right, it's 12:29. 5 Do you need a break? 6 (A recess was taken.) 7 EXAMINATION BY 8 MS. WOHLFORTH: 9 Q. Good afternoon. My name is Karen 10 Wohlforth. I represent Jody Concepcion, a 11 plaintiff in this action. I just have a few 12 questions for you today, and you'll excuse me if 13 I may repeat certain information because I wasn't 14 able to be at certain of your other depositions, 15 but it will be short. 16 I understand that you testified that 17 you met with Mr. Cohen, David Cohen, on a regular 18 basis? 19 A. Yes. 20 Q. When did those meetings start prior 21 to the convention? 22 A. Just about immediately when we were 23 awarded the convention. 24 Q. And did those meetings step up in 25 frequency as you came closer to the convention?</p>
<p style="text-align: right;">Page 776</p> <p>1 J. Esposito 2 MR. FARRELL: Objection. 3 A. I didn't think so. 4 Q. Assuming online includes both 5 arraignment before a judge and the issuance of a 6 DAT, are you aware of any policy that says for 7 anybody arrested at a demonstration for a 8 violation at a demonstration that they would be 9 processed online unless an incident commander 10 concluded that they should get a summons? 11 MR. FARRELL: Objection. 12 A. As I testified earlier, the incident 13 commander has the discretion to give a C-Summons. 14 Q. So is it my understanding then that 15 prior to the RNC that for people arrested at 16 demonstrations that the presumption would be that 17 they would be processed online, which could 18 include being given a DAT or going before a judge 19 for arraignment, and that the presumption would 20 be that that's how they would be processed, and 21 that only if the incident commander decided they 22 should get a summons that they would be eligible 23 for a consideration for a summons? 24 MR. FARRELL: Objection. 25 A. I'm not sure.</p>	<p style="text-align: right;">Page 778</p> <p>1 J. Esposito 2 A. Yes. 3 Q. How often did you meet with him in 4 the months prior to the convention? 5 A. I couldn't say. 6 Q. Once a week? 7 A. Yes, at least. 8 Q. And who else attended those 9 meetings? 10 A. At times the commissioner would be 11 there, at times it would just be me and Cohen. 12 Q. How was John McManus involved? 13 MR. FARRELL: Objection. 14 A. Jack was the coordinator for the 15 RNC, he was the point person for the RNC. 16 Q. Can you tell me what his duties 17 involved as the point person for the RNC? 18 MR. FARRELL: Objection. 19 A. Really organizing the whole event. 20 Q. Coordinating with this Committee on 21 Arrangements? 22 A. Coordinating with other city 23 agencies, federal agencies and the RNC people, 24 City Hall. 25 Q. Did he attend any of the Intel</p>

26 (Pages 775 to 778)

<p style="text-align: right;">Page 791</p> <p>1 J. Esposito</p> <p>2 explosive device that was retrieved by anyone in</p> <p>3 the NYPD as a result of the convention?</p> <p>4 MR. FARRELL: Objection.</p> <p>5 A. I would have been aware. Would I</p> <p>6 remember every incident, no. When they arrested</p> <p>7 the fellows or the people responsible for setting</p> <p>8 something on fire on 34th Street, I'm not sure if</p> <p>9 there was any explosive or accelerant retrieved.</p> <p>10 Are you aware when they set the display on fire?</p> <p>11 I'm not sure, they may have recovered some</p> <p>12 flammable substance, I'm not sure though.</p> <p>13 Q. But other than that particular</p> <p>14 incident that involved a fire, do you have any</p> <p>15 recollection of any explosive devices that were</p> <p>16 actually vouchered as a result of any arrests?</p> <p>17 A. I don't recall any.</p> <p>18 Q. Do you have any recollection of any</p> <p>19 guns or firearms of any sort that were actually</p> <p>20 vouchered as a result of any arrest?</p> <p>21 MR. FARRELL: Objection.</p> <p>22 A. Not that I recall.</p> <p>23 Q. Nonetheless, as a result of your</p> <p>24 meetings with Intel, the information that you</p> <p>25 received led you to expect that you would find --</p>	<p style="text-align: right;">Page 793</p> <p>1 J. Esposito</p> <p>2 be done that might have involved -- that was</p> <p>3 intended to involve guns or explosive devices?</p> <p>4 MR. FARRELL: Objection.</p> <p>5 A. Yes, we had information. Did I have</p> <p>6 information about specific --</p> <p>7 Q. Specific information?</p> <p>8 MR. FARRELL: Objection.</p> <p>9 A. Definition of specific -- certain</p> <p>10 people, named people, that were coming here who</p> <p>11 had a history of that type of behavior using</p> <p>12 explosives, yes, we had specific information.</p> <p>13 Q. But nothing was found?</p> <p>14 MR. FARRELL: Objection.</p> <p>15 A. No, not to my recollection. You</p> <p>16 asked me if there was specific information about</p> <p>17 people, places or things who would be involved</p> <p>18 with explosives or firearms?</p> <p>19 Q. Correct.</p> <p>20 A. Information we received from Intel</p> <p>21 were about individuals who had an arrest history</p> <p>22 of that type of behavior that were coming here</p> <p>23 during the RNC, yes.</p> <p>24 Q. Did you have any information that</p> <p>25 any of those specific individuals were expected</p>
<p style="text-align: right;">Page 792</p> <p>1 J. Esposito</p> <p>2 that you might find firearms or explosive devices</p> <p>3 during the course of this convention; is that not</p> <p>4 true?</p> <p>5 MR. FARRELL: Objection.</p> <p>6 A. We felt the potential was there.</p> <p>7 Q. Was that potential as a result of</p> <p>8 any specific Intel that was given to you by the</p> <p>9 intelligence unit?</p> <p>10 MR. FARRELL: Objection.</p> <p>11 A. Yes.</p> <p>12 Q. Was that intelligence that you</p> <p>13 received with respect to any particular location?</p> <p>14 MR. FARRELL: Objection.</p> <p>15 A. I don't recall location being</p> <p>16 mentioned.</p> <p>17 Q. It was a general threat with respect</p> <p>18 to any area in the city or was there any</p> <p>19 specificity as to the information that you</p> <p>20 received from Intel?</p> <p>21 MR. FARRELL: Objection.</p> <p>22 A. As far as the location?</p> <p>23 Q. As far as any location, I don't need</p> <p>24 to know the location, as far as any location or</p> <p>25 any specific detail regarding what was going to</p>	<p style="text-align: right;">Page 794</p> <p>1 J. Esposito</p> <p>2 to turn up on East 16th Street on August 31st?</p> <p>3 A. We knew they were coming for the</p> <p>4 Republican National Convention. We didn't know</p> <p>5 exactly what location they were going to go to.</p> <p>6 Q. Now, with respect to the issue of</p> <p>7 the warnings, were your command people provided</p> <p>8 with bullhorns for warnings?</p> <p>9 A. I believe so.</p> <p>10 Q. Were there specific instructions</p> <p>11 that each commander had to receive a certain</p> <p>12 number of bullhorns for any particular location</p> <p>13 that they were dispatched to?</p> <p>14 A. No.</p> <p>15 Q. Was there any assurance that there</p> <p>16 were bullhorns available for each commander for</p> <p>17 each location that they were dispatched to?</p> <p>18 MR. FARRELL: Objection.</p> <p>19 A. There should have been.</p> <p>20 Q. Do you know whether they were?</p> <p>21 MR. FARRELL: Objection.</p> <p>22 A. I'm not sure if every particular</p> <p>23 commander had a bullhorn but one, I believe, was</p> <p>24 available.</p> <p>25 Q. Where would it have been available?</p>

30 (Pages 791 to 794)

<p style="text-align: right;">Page 795</p> <p>1 J. Esposito</p> <p>2 A. That varies. It should be in</p> <p>3 someone's vehicle, it could have been at the</p> <p>4 command post.</p> <p>5 Q. Did you give any specific</p> <p>6 instructions with respect to any proposed</p> <p>7 demonstrations that were taking place at Union</p> <p>8 Square?</p> <p>9 MR. FARRELL: Objection.</p> <p>10 A. I don't think so.</p> <p>11 Q. Are you aware of any specific</p> <p>12 instructions that were given to any of the</p> <p>13 commanders who were dispatched to Union Square on</p> <p>14 August 31st?</p> <p>15 MR. FARRELL: Objection.</p> <p>16 A. Specific instructions?</p> <p>17 Q. Yes.</p> <p>18 A. No.</p> <p>19 Q. Did you have any meetings with</p> <p>20 Michael Tiffany at Intel?</p> <p>21 A. I believe Mike was still in the</p> <p>22 position of commanding officer of Intel at the</p> <p>23 time. He left our agency at one point, I believe</p> <p>24 it was after the RNC. So, yes, I would have had</p> <p>25 meetings with him.</p>	<p style="text-align: right;">Page 797</p> <p>1 J. Esposito</p> <p>2 expected violence or explosive devices and things</p> <p>3 of that nature. Those explosive devices were not</p> <p>4 retrieved as a result of these arrests during</p> <p>5 this convention; is that correct?</p> <p>6 MR. FARRELL: Objection.</p> <p>7 A. Correct.</p> <p>8 Q. Did you ever do any evaluation or</p> <p>9 assessment as to the reliability of the</p> <p>10 intelligence that you received?</p> <p>11 A. The intelligence was fine.</p> <p>12 Q. Well, it proved not to be correct;</p> <p>13 isn't that true?</p> <p>14 MR. FARRELL: Objection.</p> <p>15 A. Not at all.</p> <p>16 Q. You didn't find any explosive</p> <p>17 devices; is that correct?</p> <p>18 MR. FARRELL: Objection.</p> <p>19 A. We didn't say explosive devices were</p> <p>20 coming. There was potential for it. The</p> <p>21 individuals who had a history of using explosive</p> <p>22 devices were said to be coming to New York during</p> <p>23 the RNC. I believe good policing prevented the</p> <p>24 violence from reaching that level.</p> <p>25 Q. Were any of these individuals that</p>
<p style="text-align: right;">Page 796</p> <p>1 J. Esposito</p> <p>2 Q. He went to Washington, didn't he?</p> <p>3 A. Yes.</p> <p>4 Q. Did Michael Tiffany participate in</p> <p>5 most of these meetings with Commissioner Cohen</p> <p>6 that you had?</p> <p>7 MR. FARRELL: Objection.</p> <p>8 A. Some.</p> <p>9 Q. Did you ever prepare any assessment</p> <p>10 as to the discrepancy between the intelligence</p> <p>11 that you received and what you actually found</p> <p>12 during the course of these arrests during the</p> <p>13 RNC?</p> <p>14 MR. FARRELL: Objection.</p> <p>15 A. I don't know what you're referring</p> <p>16 to.</p> <p>17 Q. Did you ever prepare any written</p> <p>18 reports or critical assessments, did you ever</p> <p>19 evaluate why the intelligence that you received</p> <p>20 didn't pan out in terms of the arrests that</p> <p>21 actually took place during that convention?</p> <p>22 MR. FARRELL: Objection. He never</p> <p>23 said that.</p> <p>24 A. What do you mean by pan out?</p> <p>25 Q. You received intelligence regarding</p>	<p style="text-align: right;">Page 798</p> <p>1 J. Esposito</p> <p>2 you were warned about, to your knowledge, on East</p> <p>3 16th Street or Union Square on August 31st</p> <p>4 specifically?</p> <p>5 A. I don't know.</p> <p>6 Q. Is there anyone who would have</p> <p>7 knowledge of that?</p> <p>8 A. The intelligence division might have</p> <p>9 knowledge of that.</p> <p>10 Q. But anyone in your policing force --</p> <p>11 MR. FARRELL: Objection.</p> <p>12 Q. -- who would actually be on the</p> <p>13 ground at the site?</p> <p>14 A. Intel is on the ground.</p> <p>15 Q. Are you aware of any reports from</p> <p>16 Intel on the ground, back to central command,</p> <p>17 that any of these individuals that you were</p> <p>18 looking for were actually at East 16th Street?</p> <p>19 MR. FARRELL: Objection.</p> <p>20 A. Some of the individuals of concern</p> <p>21 were on the streets during the RNC. I believe</p> <p>22 one was seen in the area of Union Square Park. I</p> <p>23 guess that's close proximity to 16th Street,</p> <p>24 would you consider that?</p> <p>25 Q. On August 31st?</p>



<p style="text-align: right;">Page 799</p> <p>1 J. Esposito</p> <p>2 A. I don't know what date. It may have</p> <p>3 been the 31st -- no, I'm sorry, I don't know, I'm</p> <p>4 not sure.</p> <p>5 Q. Do you know if any of your</p> <p>6 undercover were part of the sweep on East 16th</p> <p>7 Street?</p> <p>8 MR. FARRELL: Objection.</p> <p>9 Q. On August 31st?</p> <p>10 MR. FARRELL: Objection. I assert</p> <p>11 the law enforcement privilege to any</p> <p>12 questions about the existence or</p> <p>13 nonexistence of undercover police officers,</p> <p>14 as I've done for the entire questioning of</p> <p>15 witnesses.</p> <p>16 MS. WOHLFORTH: I have no further</p> <p>17 questions.</p> <p>18 (A luncheon recess was taken, 1:15</p> <p>19 P.M. - 2:55 P.M.)</p> <p>20</p> <p>21 AFTERNOON SESSION</p> <p>22</p> <p>23 EXAMINATION BY</p> <p>24 MS. RITCHIE:</p> <p>25 Q. Good afternoon. My name is Andrea</p>	<p style="text-align: right;">Page 801</p> <p>1 J. Esposito</p> <p>2 A. Well, it really is the same policy</p> <p>3 for both, we are not going to allow it. Now, an</p> <p>4 investigation may be done by an outside agency,</p> <p>5 not us, depending on who the complaint is made</p> <p>6 to. Civilian Complaint Review Board may do it,</p> <p>7 the DA's office may do it, it depends on the</p> <p>8 allegation and how it's taken and the severity of</p> <p>9 it.</p> <p>10 Q. So you're saying that if the</p> <p>11 complaint is made to the Civilian Complaint</p> <p>12 Review Board, they would conduct the</p> <p>13 investigation?</p> <p>14 A. They get sent to that area. They</p> <p>15 refer it back to us because it's criminal, they</p> <p>16 may refer it to the DA's office.</p> <p>17 Q. Might it also be investigated by the</p> <p>18 Internal Affairs Bureau?</p> <p>19 A. Sure.</p> <p>20 Q. Can you tell me where that policy is</p> <p>21 found, is it written down somewhere?</p> <p>22 A. Regarding with prisoners or within</p> <p>23 the agency?</p> <p>24 Q. Well, let's start with within the</p> <p>25 agency?</p>
<p style="text-align: right;">Page 800</p> <p>1 J. Esposito</p> <p>2 Ritchie, I'm counsel for Plaintiff Caitlin Tikkun</p> <p>3 in Civil Action 059901. I have some questions</p> <p>4 for you primarily about NYPD policy and practice.</p> <p>5 A. Okay.</p> <p>6 Q. It's my understanding that you</p> <p>7 testified earlier in this deposition that sexual</p> <p>8 harassment by members of the New York City Police</p> <p>9 Department would not be tolerated; is that</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 Q. As chief of department, are you</p> <p>13 aware of any specific NYPD policy concerning</p> <p>14 sexual harassment?</p> <p>15 MR. FARRELL: Objection to the</p> <p>16 extent it's been asked and answered</p> <p>17 previously.</p> <p>18 A. We have a policy, and basically it's</p> <p>19 not going to be tolerated and we will investigate</p> <p>20 any allegations and take appropriate disciplinary</p> <p>21 action if necessary.</p> <p>22 Q. Are you talking about sexual</p> <p>23 harassment between NYPD employees or does this</p> <p>24 policy cover interactions between NYPD officers</p> <p>25 and members of the public?</p>	<p style="text-align: right;">Page 802</p> <p>1 J. Esposito</p> <p>2 A. Within the agency, the statements by</p> <p>3 the Office of Equal Employment, they're the ones</p> <p>4 who oversee this policy. And as far as with</p> <p>5 regards to prisoners, it would be in the patrol</p> <p>6 guide how to treat prisoners.</p> <p>7 Q. Can you give me a precise reference</p> <p>8 to a section of the patrol guide?</p> <p>9 A. No, I don't have it.</p> <p>10 Q. Do you know if there is a section</p> <p>11 that deals specifically with sexual harassment?</p> <p>12 MR. FARRELL: Objection.</p> <p>13 A. I'm not sure if it mentions that per</p> <p>14 se.</p> <p>15 Q. So what section are you thinking of?</p> <p>16 A. With regards to how to treat</p> <p>17 prisoners.</p> <p>18 Q. It's your understanding of the</p> <p>19 section that deals with how to treat prisoners</p> <p>20 specifically refers to sexual harassment?</p> <p>21 MR. FARRELL: Objection.</p> <p>22 A. I don't know if it does.</p> <p>23 Q. What about members of the public who</p> <p>24 are not prisoners?</p> <p>25 MR. FARRELL: Objection.</p>

32 (Pages 799 to 802)

<p style="text-align: right;">Page 823</p> <p>1 J. Esposito</p> <p>2 A. No.</p> <p>3 Q. Do you recall the issue coming up in</p> <p>4 connection with the 6th Precinct?</p> <p>5 MR. FARRELL: Objection.</p> <p>6 A. Not specifically, no, I don't.</p> <p>7 Q. You referred earlier today on having</p> <p>8 received specific information from Intel</p> <p>9 concerning issues relating to identification</p> <p>10 documents?</p> <p>11 A. Yes.</p> <p>12 Q. And the concern was that people be</p> <p>13 carrying false identification documents; is that</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. Did any of that information suggest</p> <p>17 that people would be carrying identification</p> <p>18 documents that reflected a gender that was</p> <p>19 different than -- that was of a different gender</p> <p>20 than you would expect?</p> <p>21 MR. FARRELL: Objection.</p> <p>22 A. I don't recall that being talked</p> <p>23 about.</p> <p>24 MS. RITCHIE: I have nothing</p> <p>25 further. Thank you.</p>	<p style="text-align: right;">Page 825</p> <p>1 J. Esposito</p> <p>2</p> <p>3 I, the witness herein, having read the foregoing</p> <p>4 testimony, do hereby certify it to be a true and</p> <p>5 correct transcript, subject to the corrections,</p> <p>6 if any, shown on the attached page.</p> <p>7</p> <p>8</p> <p>9</p> <p>10 _____</p> <p>11 JOSEPH ESPOSITO</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Subscribed and sworn to</p> <p>16 before me this ____ day</p> <p>17 of _____ 2006.</p> <p>18</p> <p>19</p> <p>20 _____</p> <p>21 NOTARY PUBLIC</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 824</p> <p>1 J. Esposito</p> <p>2 MR. FARRELL: For the record, just</p> <p>3 as I have with the prior days' testimony</p> <p>4 and the continuing deposition of Chief</p> <p>5 Esposito, we would request to review and</p> <p>6 sign pursuant to Rule 30.</p> <p>7 There are no other counsel here who</p> <p>8 are seeking to question Chief Esposito, so</p> <p>9 the deposition of Chief Esposito is closed.</p> <p>10 (Time noted: 3:30 P.M.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 826</p> <p>1</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK )</p> <p>4 :ss</p> <p>5 COUNTY OF NEW YORK )</p> <p>6</p> <p>7 I, MARION FROLA, a Court Reporter</p> <p>8 and Notary Public in and for the State of New</p> <p>9 York, do hereby certify:</p> <p>10 THAT the witness whose testimony is</p> <p>11 hereinbefore set forth, was duly sworn before the</p> <p>12 commencement of testimony; and</p> <p>13 THAT the within transcript is a true</p> <p>14 record of the testimony given by said witness, to</p> <p>15 the best of my ability.</p> <p>16 I further certify that I am not</p> <p>17 related, either by blood or marriage, to any of</p> <p>18 the parties to this action; and</p> <p>19 THAT I am in no way interested in</p> <p>20 the outcome of this matter.</p> <p>21 IN WITNESS WHEREOF, I have hereunto</p> <p>22 set my hand this 31st day of July 2006.</p> <p>23</p> <p>24 _____</p> <p>25 MARION FROLA</p>

# **EXHIBIT R**



MICHAEL A. CARDOZO  
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February 1, 2008

**BY FAX**

The Honorable Richard J. Sullivan  
United States District Judge  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, New York 10007-1312

***Re: Consolidated RNC Cases***

Dear Judge Sullivan:

On January 23, 2008, Magistrate Judge Francis issued an opinion and order granting in part and denying in part the motions of plaintiffs in approximately 37 RNC actions to amend their complaints to add various claims and defendants (the "Order"). As Your Honor may recall, plaintiffs' motions to amend were filed nearly three years after the incidents giving rise to these claims, on the eve of expiry of the federal statute of limitations and after nearly three years of consolidated discovery in the RNC cases.

In the Order, the Magistrate Judge has permitted plaintiffs to add as a defendant Deputy Commissioner of Intelligence David Cohen although we believe that plaintiffs have not properly pled any cause of action against him. Due to the importance of this issue, and other potential grounds for appeal that we are reviewing, defendants will appeal the Order for Your Honor's review.

In light of the burdens under which defendants are laboring in these numerous actions, which includes ongoing party and nonparty discovery as well as heavy briefing schedules before both Your Honor and Magistrate Francis on various issues, the parties have conferred on a briefing schedule. Plaintiffs' counsel, Jeffrey Rothman, has consented to the schedule proposed below; in several conversations, the Beldock firm, through Ms. Norins, has expressed no objection but has not yet provided a final answer; Ms. Weber consents on the

condition that she be permitted an extra week to submit her opposition to the appeal; other plaintiffs' counsel who have moved to amend have not responded to our email inquiries.

Based on these discussions, the parties propose the following schedule: defendants appeal shall be due on February 25, 2008; plaintiffs' opposition shall be due on March 17, 2008; and defendants' reply shall be due on March 31, 2008. The parties respectfully request that the Court "so order" it.

Respectfully submitted,



James Mirro

cc: RNC Distribution List (by email)

**EXHIBIT S**

**Clare Norins**

---

**From:** Clare Norins  
**Sent:** Sunday, February 03, 2008 3:42 PM  
**To:** Sundaran, Raju; 'Mirro, James'; 'Farrell, Peter'  
**Cc:** Jonathan C. Moore; Rachel Kleinman  
**Subject:** Briefing on Rule 72 re Amending Complaints

Hi Jim & Raju:

Counsel in MacNamara consents to the proposed briefing schedule with the understanding that defendants will not be appealing the addition of the as-applied constitutional challenges to the Parading Without a Permit and Disorderly Conduct statutes.

Thanks,  
Clare

Clare Rivka Norins, Esq.  
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